

**T H E
L A W
O F
A C T I O N S:
B E I N G**

**An Exact, Brief and Methodical
COLLECTION of all adjudg'd CASES
out of all the Reports of the L A W to
this Day;**

And likewise from

Roll's Abridgment,

Correcting the Method thereof:

B Y W H I C H,

**Any particular Case may be presently found,
and the Reason that Rules it render'd obvi-
ous to the meanest Capacity.**

W I T H

The Substance of the Pleadings in those Actions.

In the S A V O R:

**Printed by John Nutt, Assignee of Edward
Sayer Esq; for John Hartley between the
Two Temple-Gates in Fleetstreet. 1710.**

THE
LAW
OF
ACTIONS:
BEING

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out of all the Reports of the LAW to
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Containing the Method thereof:

BY WHICH

Any particular Case may be presently found
and the Reason that Rules it rendered obvi-
ous to the meanest Capacity.

WITH

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In the 2 VOLUMES:

Printed by John Hart, Alliance of Edward
2nd Ed. for John Hart, between the
Two Temple-Gates in Fleet-street. 1740.



To the Honourable

Sir Philip Medows, JUN.

Knight-Marshal of England

SIR,

As the Approbation that many of the Learned in the Law have given the following Treatise for a very useful Work, and serviceable to the Profession, has recompenc'd my great Pains and Labour in the Composing of it; so has it also had no small Influence on me to secure its lasting Reputation, by sheltering it under the Name of Sir PHILIP MEDOWS, whose admirable Qualifications so eminent in that high Character, by which you have done your Country great Honour in Foreign Courts, are a sufficient Defence against Malice or Envy. But this Book has yet

The Dedication.

a more peculiar Claim to your Protection; since under you, Sir, is executed this Branch of the Law of Great Britain.

Be therefore pleas'd, Sir, to accept of this humble Testimony of my Veneration and Esteem; and if the great Posts, to which your Abilities call you, will permit you to look into the Practical Part of that Law, to the Theory of which, as well as of all other Sciences, Nature and your extraordinary Acquirements, have so wonderfully and happily adapted you. I hope the few Moments which you spend in casting a favourable Eye on this little Offering, will not be wholly thrown away. I am,

SIR,

Your most Humble, and

most Obedient Servant

To the Reader.

**TO THE
READER.**

I Shall not trouble you with tedious
Discourses in Commendation of our
English Laws, there are enough of them
already to be found in Prefaces to Law-
Books: I shall only observe, That he does
much greater Honour to the Law who
makes it intelligible by a good Method,
and a perspicuous Way of Writing, than
he that makes Harangues about the
Excellencies of it. As for this Book,
which has cost me much Time and Pains,
you will find it full of useful Learn-
ing, it being collected out of the best
Authorities of the Law, the most Mo-
dern whereof are, the Reports of Syder-
fin, Ventriss and Levinz, in the flourish-
ing Reign of King Charles II. when there
were as judicious and able Men of the

To the Reader.

Long Robe, as ever this Nation bred. Out of the Reports, I have only set down the Resolution of the principal Cases, with the Reasons that govern them. I have here abstracted Roll's Abridgment, a Book of great Authority, and have corrected the Method thereof, and have render'd that and the French Reports into English, for the Use and Benefit of all. If you will be pleas'd to take Notice of the Heads, Divisions, and Subdivisions, which run through the whole Book, before their several Trains of Particulars, you will soon discern the true Reason of Law, easily distinguish thereby, and readily find out any particular Case whensoever you shall have Occasion to search.

Excellencies of Intelligence which has cost me much Time and Labour you will find it full of useful Learning, it being collected out of the best Authorities of the Law, and set in a new Order, whereof are the Reports of several Courts and Lawyers in the History of King Charles II. when there were as judicious and able Men of the

The

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	Action

Action in General.

TR O V E R and *Assumpsit* don't lie together in one Action. *Levinz Reports*; 3 Part 99. *Bage* against *Brommel*. If the Original be in one County, and the Declaration in another, 'tis good against the Defendant, but not against the Bail. Adjudged upon a *Scire fac.* against the Bail. *Ib.* 2. 35. *Tates* against *Plaintin*.

Indebitatus Assumpsit for Goods sold and deliver'd; the Sale was in *Kent*, and the Delivery in *London*. Where the Matter consists of two Parts in several Counties, the Plaintiff may lay his Action in which he pleases. *Ventris's* 1 Part 344. *Anonymus*.

In an Action upon the Case in the Nature of a Conspiracy, it was resolved, That tho' when the Matter arises in several Counties, the Plaintiff may lay his Action in either of them; yet if there be like to be no indifferent Tryal in the Place where 'tis laid, the Court may change the Venue, tho' the Plaintiff be a Peer. *Ventris* 1 Part 364. The *Earl of Shaftsbury* against *Graham*, and *Others*.

2 Action upon the Case.

An Attorney has Priviledge to lay his Action in *Middlesex*, because of his Attendance. *Ventris 2 Part 47. Anonymus.*

Action upon the Case.

For Slander.

Words in Course of Justice.

IN a Cause brought in a proper Court, an Action doth not lie against the Parties for scandalizing the Witnesses, nor against the Witnesses for scandalizing the Parties; as to say, That he is a Bankrupt; or that he was perjur'd at such Assizes; or that there is not a Word true in that Affidavit, for it is in the Course of Justice. *Roll's Abridgment 33. B. 1, 2. 33. C. 3.* The same Law if a Counsellor speaks such Words, *&c. 87 M. 1, 2, 3.*

An Action doth not lie, if a Bailiff, tho' he be not compell'd by Process, makes a false Affidavit, that the Party taken by him upon Process in Chancery rescued himself, upon which the Party is committed, for the Affidavit was made in a legal Course. *Ib. 33. C. 2.*

Where



Action upon the Case.

3

*Where the Spiritual Court hath Conusans,
no Action lies.*

Whore, and Whore-master. *Rolls Abrid.* 34.
D. 1.

He hath Bastards. *Ib.* 34. D. 2, 37. D. 20.

She hath Bastards. *Ib.* 36. D. 11, 37. D.
19, 38. D. 23.

Bawd. *Ib.* 44. H. 9. 45. H. 20.

Bastard. *Ib.* 37. D. 18.

Symonist; for by the Symony the Patron
only to see the Presentation, *pro hac vice* by the
Temporal Law. *Ib.* 38. D. 24.

Recusant. *Ib.* 38. D. 24.

If a Parson pronounces in the Church the
Plaintiff Excommunicated, who is not Excom-
municated; an Action lies, for it is a great
Scandal, and Malicious. *Ib.* 37. D. 15.

*Where the Spiritual Court hath Conusans,
if the Words may occasion a Temporal
Loss, an Action lies.*

Loss of Marriage. *Rolls Abr.* 34. D. 3. 35.
D. 4, 5, 6, 8, 10. It ought to be of a parti-
cular Marriage. *Ib.* 36. D. 12.

Loss of the Society of Neighbours by a Woman who hath Wooers. *Ib.* 35. D. 7.

If the Defendant saith, That the Bastard may be any Charge to the Parish, or it appears that he intended it, for the Statute 18 *Eliz.* cap. 3. provides Punishment. *Ib.* 37. D. 19, 20. A common Whore, or Bawd, ought to be Carted by the Custom of *London.* *Ib.* 36. D. 13, 14.

To say a Man is a Bastard, that has Land by Discent. *Ib.* 37. D. 16. But not before he, hath it in the Time of his Ancestor. *Ib.* 37. D. 18. 38, D. 22. Unless the Declaration be, that the Ancestor intends to disinherit him. *Ib.* 38. D. 21.

If it appears that he intended him a Recusant, according to the Statute. *Ib.* 38. D. 24.

He has a Bastard of a Minister, by which he loseth a Chaplainship. *Levinz* 1 Part 248. *Payne* against *Beaumont*.

She was with Child by S. by which she was in the Displeasure of her Parents, and in Danger of being put out of their House, not Actionable. *Levinz* 1 Part 261. *Barns* against *Strudd.* And the Case in *Rolls* 35. Action for saying, She was with Child, by which she lost the Society of her Neighbours, was held not to be Law: But 3 *Cro.* 639. She had a Child, and if she have not a Child, she has made it away; may be Law, because it imports Felony: But Note, Loss of Marriage is laid also in that Action.

She was with Child by J. S. whereof she miscarried; and concludes, that by reason thereof

Action upon the Case. 5

thereof she was so brought into her Father's Displeasure, that he turn'd her out of Doors, and that she was brought within the Penalty of the Statute of 18 *Eliz.* Not Actionable, unless a special Damage has been alledg'd, as to say, she had lost her Marriage. *Ventris 1 Part 4. Barnes against Bruddell.*

General Words, no Action lies.

Rogue. *Rolls Abr.* 43. G. 7.

Bankrupt. *Ib.* 44. H. 6.

Common Barretor. *Ib.* 44. H. 7.

Pimp. *Ib.* 44. H. 7.

Witch. *Ib.* 44 H. 14. 45. H. 15, 45. H. 3.

And a very strong Witch. *Ib.* 45. H. 21.

Sorcerer. *Ib.* 45. H. 17.

Inchanter. *Ib.* 45. H. 17.

He hath the Falling-Sickness. *Ib.* 44. H. 5.

He hath forsworn himself. *Ib.* 39. H. 5.

He hath took a false Oath. *Ib.* 42. F. 28.

Thou hast done that thou deservest to be hang'd. *Ib.* 43. G. 4, 5.

You are no true Subject to the King. *Ib.* 43. G. 6.

Thou art a Witch; I will make thee say, God save my Mare. I was forc'd to have my Mare charm'd for thee; for the last Words ought to be construed to prevent Witchcraft, You are a Witch, and I will have you search'd, it shall be intended for his Satisfaction. *Ib.* 46. H. 30.

6 Action upon the Case.

Rogue, or cozening Rogue. *Ib.* 62. *V.* 24.

Knave, or cheating cozening Knave. *Ib.* 62.
V. 25.

*Where the Words touch Life or Member,
an Action lies.*

Clipper, and shall be hang'd for it. *Levinz*
3 *Part* 166. *Walter* against *Beaver*.

Clipper, and thy Neck shall pay for it. *Ib.*
Naden against *Micocke*.

Witch, and I will make thee suffer for it.
Ib. 394. *Stephtns* against *Corben*.

Witch, and I will hang you for it. *Levinz*
1 *Part* 255. *Shagter* against *Davies*.

Thief, for thou hast stolen, &c. *Rolls Abr.*
42. *G.* 1. 2.

Felon. *Ib.* 43. *G.* 3.

Branded Rogue. *Ib.* 43. *G.* 8.

Rogue of Record at O. *Ib.* 43. *G.* 9.

He did Treason in the *Low Countries*. *Ib.* 63.
V. 32.

Thou hast deserv'd to be hang'd, for when
thou wast retain'd to serve thy Prince, thou
didst run away from thy Captain. No Action
lies, for it does not appear that he said, that
he was press'd to serve, and receiv'd Press-Mo-
ney. *Ib.* 63. *V.* 33.

You are a Pick-pocket, you pick'd my
Pocket, and took away my Money, and I will
justifie it: These Words are not Actionable.

Levinz

Action upon the Case.

7

Levinz 2 Part 51. Watts against Rymes. Ventris 1 Part 213. Anonymus.

Thou hast stolen as much Lead out of my Master's House as is as big as a House. It ought to be intended Lead there lying; but if the Words had been, Stole off my Master's House, it might be Lead fix'd to the Freehold that cover'd the House. *Levinz 1 Part 156. Ering against Street.*

Thou hast receiv'd stolen Goods, and knew they were stolen. A. S. stoie them, and thou wert Partner with her. The first Words not Actionable, for they might admit of a justifiable Construction, as if the Goods were waived; but the last were held sufficient, for Partner with her, must intend Partner in the Felony. *Ventris 1 Part 18. Anonymus.*

He hath broke Three or Four of his Father's Ribs, of which he shortly after died, and I will complain to a Justice of him; he may be hang'd for the Murther, tho' it were done Twenty Years since. Taking all the Words together, the Defendant must necessarily intend a murd'rous Killing; and for the not averring that he was dead, the Action lies, unless it appears upon the Record that the Party is alive. *Ventris 1 Part 117. Philips against Kingston.*

An Action lies for charging a Man with Felony generally, without mentioning any Felony in particular. *Ventris 1 Part 264. Anonymus.*

He wou'd have given D. Money to have robb'd G's House, and he did rob the House; an Action lies as was adjudged, where the Words were, He lay in wait to rob. And the Court said, the Words might be construed, that the Plaintiff offer'd D. Money, and he refusing it, the Plaintiff robb'd the House himself. *Ventris 1 Part 323. Anonymus.*

Where the Words may occasion Corporal Punishment or Fine, an Action lies.

He stole a Thing which is only *Petit-Larceny*. *Rolls Abr. 43. H. 1, 2.*

Forsworn. He is forsworn, and his Oath is upon Record. *Ib. 42. F. 29.*

Forsworn in a Court of Record generally. *Ib. 42. F. 26.*

Forsworn in a Court of Record (having Reference to an Oath not upon any Issue) for it was an Offence at the Common Law. *Ib. 41 F. 24. 42. F. 27. 39. E. 3.*

The *Chancery* is a Court of Record. *Ib. 40. F. 18.*

In *Chancery*, (*i e.*) in the Court of *Chancery*. *Ib. 41. F. 20.*

In his Answer in *Chancery*. *Ib. 40. F. 16.*

Before the Council of the Marches of *Wales*; tho' it was objected, That this Court cannot take Notice of that Council. *Ib. 40. F. 10.*

Action upon the Case. 9

In the Ecclesiastical Court, for it is known.
Ib. 40. *F.* 9.

At the Assizes, having Reference to an Issue, and Evidence there given. *Ib.* 41. *F.* 22. But otherwise if it be said at the Assizes generally, without averring that it was at a Tryal, or before the Court or Jury. *Ib.* 42. *F.* 29.

In *B's* Bill, if the Plaintiff shews in the Declaration, a Suit in Chancery, &c. *Ib.* 41. *F.* 25.

Before *W.* Justice of *B. R.* *inuendo* the Oath taken upon the Articles exhibited in *B. R.* against the Defendant. *Ib.* 38. *E.* 1.

In *Leake* Court, the Plaintiff ought to shew that it is such a Court as can compell one to swear. *Ib.* 39. *F.* 7. And wast indicted, and hast compounded for it. *Ib.* 40. *F.* 8. And I will set thee on the Pillory. *Ib.* 40. *F.* 11.

He did forswear me 40 s. worth of Tythe in *Canterbury* Court; The Plaintiff ought to shew in what Court, or before what Judge, and that the Judge had Authority to hold Plea of Tythes. *Ib.* 40. *F.* 12.

In that Action (having Communication, &c.) if the Plaintiff shews, that at the Court Baron of *G.* held at *S.* it ought to be alledg'd, that *S.* is in *G.* and also that he was sworn about a Matter pertinent to the Issue. *Ib.* 40. *F.* 13. But *Quare*, if a Court Baron be within the Statute. 5 *Eliz.*

In a Court Baron an Action does not lie, for it is not of Record. *Ib.* 40. *F.* 19. But Enquire

10 Action upon the Case.

quire of these two last Resolutions ; for in *Synderfin. 1. 454.* it is resolv'd, That it is Perjury at the Common Law, and indictable.

Forsworn. For he swore, that the Wood was worth 40 s. where it was dear of 13 s. the Action does not lie, for that he does not say directly that it was not worth 40 s. *Ib. 40. F. 14.*

Subornation. *Ib. 41. F. 21.* Of a Jury-man. *Ib. 41. F. 23.*

Forgery, tho' not within the Statute 5 *Eliz. cap. 14.* As to say of any Man generally, he hath forged a Writ. *Ib. 65. T. 2.* He hath forged the King's Evidence, and I would not be in his Coat for 1000 l. Is found generally. *Ib. 65. T. 4.*

This is B's writing, and he hath forged this Warrant ; an *innuendo* will not support the Action, the Word *Warrant* alone being of an uncertain Sense, and the Matter of the Action shall not be enlarged or ascertain'd by the *innuendo.* *Ib. 66. T. 11.*

Thou hast made forged Writings, and thou should'st have lost thy Ears for it ; it is uncertain if he intended Writings, the forging of which will deserve the losing of his Ears, and then the last Words do not explain his Intention, in as much as it may be that it was only a false Conclusion upon the Premises. *Ib. 66. T. 8.*

Perjur'd. *Ib. 39. F. 1. 39. F. 4.*

In a Will. *Ib. 39. E. 2.*

I could

Action upon the Case. 11

I could prove him Perjur'd if I would. *Ib.*
39. *F. 2.*

Perjury in an Hundred Court, is within the
expres Words of the Statute. 5 *Eliz.* *Ib.* 42.
F. 30.

In a Court of *Tottenham*, for it shall be in-
tended a sufficient Court to hold Plea, *Ib.* 39.
F. 6.

Libel. If *A.* saith, that *B.* made a Libel
which was made of *A.* in Writing. *Ib.* 46.
H. 27.

Thou keepest a Bawdy House. *Ib.* 44. *H. 8.*

Forsworn before a Justice of Peace. *Levinz*
3 *Part* 166. *Gurneth* against *Deny.*

He is a Perjur'd Rogue, as well as I. The
Defendant hath supplied the Want of an Aver-
ment, in saying, As well as I; by which he con-
fesseth himself to be a Perjur'd Rogue. *Levinz*
1 *Part* 65. *Orton* against *Fuller.*

You are a forger of Bonds, a publisher of
Forgery, and sue upon forged Bonds. The
Jury found the Defendant not Guilty as to the
first Words, and it was resolved the last Words
were not Actionable. *Ventris* 1 *Part* 3. *Twis-*
leton against *Hobbs.*

He hath forged his Unkle *R.*'s Will; Action-
able, without averring that *R.* is Dead, for the
Words imply it: For if he were not dead, he
could not forge his Will. *Ventris* 1 *Part* 149.
Dorrel against *Jay.*

Where

Where the Words occasion loss of Marriage, an Action lies.

To claim Contract of Marriage with a Woman falsely and maliciously, by which she loseth her Marriage. *Levinz 1 Part 53. Shepard against Wakeman.*

Where the Words may occasion loss of Society or Reputation, an Action lies.

The Great or the French Pox. *Ib. 43. H. 3. Leaper. Ib. 44. H. 4.*

Thou art rotted with the Pox. *Ib. 61. V. 15.*

He got the Pox of a yellow-hair'd Wench. *Levinz 1 Part 205. Lerome against Hackley.*

Where the Defamation is great, an Action lies.

Tho' the Defendant did not charge the Plaintiff to have done any Dammage to any Person or Goods, or to have made Invocation to Spirits, by which he should be punishable within the Statute of Witches; yet to say, that he hath bewitch'd (or hath unwitch'd, as in *Part 1. of Rolls Reports, 255. Loais against Cook.*) any Man,

Action upon the Case. 13

Man, is a grand Defamation, and Actionable. *Rolls Abr.* 44. *H.* 11. 44. *H.* 12. 45. *H.* 16. 45. *H.* 20. 46. *H.* 26. 46. *H.* 31. Or any Part of his Body, 45 *H.* 22. Or his Meat or Drink, 45 *H.* 23. Or any of his Cattle, 46 *H.* 28.

He hath bewitched my Ware, and I can take no Fish; no Action lies. *Ib.* 45. *H.* 19.

He is a Witch convicted; for it shall be intended upon the Statute 1 *Jac.* c. 14. *Ib.* 25. *H.* 45. Some of the Justices seem'd that there was no Punishment for Witchcraft at the Common Law. *Ib.* 45. *H.* 21.

He was whip'd for stealing of Sheep. *Ib.* 50. *P.* 9.

Thou art an Inchanter, and inchantest a Bullock, and madest him run mad about the Common, not Actionable; for an Inchanter is but a Cheat, who deals in Charms to cheat, and is not a Witch; and to make a Bullock run mad about the Common, may be by chafing and chafing of him. *Levinz* 1 Part 276. *Seamone* against *More*.

Where A. said that B. said, or other Men generally said, &c.

An Action lies against A. with an Averment, That B. did not say, &c. for if B. said it, it lies only against B. *Rolls Abr.* 64. *X.* 1. 2, 3. *Levinz* 1 Part 82. *Crawford* against *Middleton*.

Words

14 Action upon the Case.

Words in Disgrace, or Disability of a Man's Profession, Office or Trade, &c. will bear an Action.

Of an Attorney. *Rolls Abr.* 52. *S. usq;* 54. *S.* 10. 54. *S.* 13. 54. *S.* 15. 55. *S.* 18, 19, 20, 21, 23.

It lies, for calling an Officer a Papist. *Levinz* 3 *Part* 30. *Sir Tho. Clarges* against *Roe*.

Of a publick Officer. As of a Justice of Peace, that he is a common Barretor. *Ib.* 59. *V.* 3.

Of a Justice of Peace. *Ib.* 56. *S.* 27. 56. *S.* 29. 57. *S.* 30, 31, 32, 33, 34, 57. *S.* 38. 58. *S.* 39. 59. *V.* 3.

Of a Doctor of Physick. *Ib.* 54. *S.* 10, 11, 12.

Of a Counsellor. *Ib.* 54. *S.* 14. 55. *S.* 16. 55. *S.* 17. 55. *S.* 22. 56. *S.* 25. 57. *S.* 37.

Writ in a Letter to his Client, he will give Vexatious, and ill Counsel, and stir up a Suit, and milk your Purse, and fill his own large Pockets, *per quod*, he lost that and other Clients; Actionable. *Ventris* 2 *Part* 28. *King of Greys-Inn* against *Sir Edward Lake*.

Of a Commissioner in Chancery. *Ib.* 57. *S.* 35. Commission'd by the King to hear and determine a Cause in Chancery, *scil.* that he was bed, tho' the Commission was not return'd, and tho' was not any Judge sworn in that Commission. *Ib.* 56. *S.* 26.

Of

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Of a Steward of a Court Baron and Leet. *Ib.*

56. S. 28.

Of one that is the King's Receiver. *Ib.* 57.

S. 36.

Of a Church-Warden. *Ib.* 58. T. 1.

Of a Parson. *Ib.* 58. T. 2.

Of a Servant, *sc.* of a Bailiff, 59. V. 5. 61.

V. 23. Of a Journeyman Shoemaker. *Ib.* 60.

V. 8. Of a Journeyman. *Ib.* 60. V. 9.

Of a Tradesman, mentioning his Trade, or having Communication of it. Of a Brewer, *sc.* my Mare will piss as good Drink as he brews. The Plaintiff ought to aver, that particular Persons abstain to buy Beer of him, and not his Customers generally, *Rolls Abr.* 58. V. 1. But if the Defendant had said, that he brews unwholesome Beer, the Declaration is good, without shewing any particular Loss, for he is punishable for it. *Ib.* 62. V. 28.

Of any Tradesman. He is not able to pay above 2 s. in the Pound to his Creditors of their Debts, an action lies without avering any particular Damage. *Ib.* 60. V. 12.

Of a Mercer. Thou dost owe more than thou art worth: An Action lies; alledging, that his former Creditors, nor any other Men, will not trust him with Merchandize. *Ib.*

Note, Where there is an apparent Slander to one in his Trade, it is sufficient if it be alledged, That by reason of these Words he hath lost his Customers, and a great Benefit thereby, without shewing that he hath any Customers in particular

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ricular by Name; for it is not like an Action for loss of Marriage, but like an Action brought by a Counsellor for Words, by which he hath lost his Clients in general. *Ib.* 63. *V.* 31.

Of any Tradesman. Thou art not worth a Groat, no Action lies; for nevertheless his Credit may be good. *Ib.* 86. *L.* 3.

Of a Merchant. *Ib.* 59. *V.* 2. 61. *V.* 17, 18, 20. In his Partnership, which is part of his Trade as a Merchant. *Ib.* 60. *V.* 10. Of a Merchant that has left off his Trade. *Ib.* 61. *V.* 16. 61. *V.* 19. Of a Merchant; He is a cheating Merchant. *Syderfin.* 1. 433.

Of a Smith. Thou art a cozening Rogue, and didst cheat him in the Price: No Action lies; for he did not intend in the ill making of the Wheels, for he did not make them, but only sold them, and it is no Disgrace for such Men of Trade that sell Things, to cozen in the Price. *Rolls Abr.* 55. *S.* 24.

Of a Weaver. *Ib.* 59. *V.* 4.

Of a Scrivener. *Ib.* 59. *V.* 6.

Of one that lives by Buying and Selling. *Ib.* 60. *V.* 11.

Of a Mercer. *Ib.* 61. *V.* 22.

Of a Tradesman without any Communication of his Trade. *Ib.* 62. *V.* 25. 26.

Of a Goldsmith. *Ib.* 62. *V.* 27.

Of one that boards Children. *Ib.* 63. *V.* 29.

Of a Leatherfeller. *Ib.* 63. *V.* 30.

Of

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Of any Tradesman. *Ib.* 63. *V.* 31.

To keep a Stable, and take Horses, &c. is no Trade allow'd by Law. *Ib.* 59. *V.* 7.

Of a Master. Have a Care of him, and do not deal with him, he is a Cheat and will cheat you ; he has cheated all the Farmers at *Eping*, and dares not shew his Face there, and now he is come to cheat at *Hatfield*; without *Colloquium* of his Trade, the Action lies, for the Words themselves supply the *Colloquium*, appearing to be of his Trade. *Levinz* 2 Part 62. *Reeve* against *Holgate*.

Of a Carrier. He has made false Letters; he has cozen'd my Husband of Eleven Pounds, and gave me a false and forged Acquittance without *Colloquium* of his Trade, the Action doth not lie. *Levinz* 1 Part 112. *Mills* against *Munday* and *Ux*.

Of a Lime burner. He is a cheating Knave ; scandalous Words relating to a Man's Profession are Actionable, be the Profession never so mean. *Levinz* 1 Part 115. *Terry* against *Hooper*.

Of a Mercer. He is a cheating Knave and Rogue, without *Colloquium* of his Trade, not Actionable. *Levinz* 1 Part 250. *Smedly* against *Heath*.

Of a Merchant. He is fled and gone, and I shall lose my Money ; and at another Day, He is a beggarly Fellow not worth a Groat, nor able to pay his Debts : The Court were of Opinion, that the last Words were as Actionable

as the former. *Levinz 1 Part 276. Drake against Hill.*

Of a Justice of Peace. An Action lies for saying, it is reported a Maid saw Sir J. K. when he was sick receive Extream Unction, &c. the Eucharist from a Priest, and the Plaintiff avers it not so reported. *Levinz 3 Part 68. Knightly against Marrow.*

Fool, Ass, Beetleheaded Justice, not Actionable, because the Words found in Disability, &c. wherein he does not get his Living. *Levinz 1 Part 52. Bill against Neal.*

He is a forsworn Justice, and not fit to sit upon a Bench, Actionable; for by the Words themselves, it appears, that they were spoken of him in respect of his Office, and therefore there needs no Colloquium. *Levinz 1 Part 280. Sir John Carn against Osgood. Ventris 1 Part 50.* The same Case different in the Name of the Plaintiff; *scil.* Sir John Kerle against Osgood, and differently reported, tho' the same in Substance.

He is not worth a Groat, and is gone to the Dogs, not Actionable; tho' the Statute H. 6. requires that a Justice of Peace should have 40 l. a Year. *Ventris 1 Part 258. Anonymous.*

Of an Attorney. He cannot read a Declaration, by which he lost one S. his Client, Actionable; tho' the Plaintiff did not aver that he could read a Declaration, the Words being found

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found false by the Verdict. *Levinz 1 Part 297. Powel against Jones.*

Of a Midwife. She is an ignorant Woman, and of small Practice, and very unfortunate in her Way; there are few that she goes to but lie desperately ill, or die under her Hands; Actionable. *Ventris 1 Part 21. Wharton against Brooke.*

Of a Mercer. You are a cheating Fellow, and keep a false Book, Actionable; for it must be intended a Debt-Book, tho' without *Colloquium* of his Trade. *Ventris 1 Part 117. Anonymus.*

Of an Under-Carrier of Post-Letters. He hath broken up Letters and taken out Bills of Exchange, which brought him to such Discredit that he lost the said Imployment, an Action lies: Not for that the Words do not import, but that he might break open the Letters by the direction of those to whom they were directed; neither do they express that they were Post-Letters, and the *Innuendo* will not help it, unless there had been such a Signification in the Words; neither is it (by *Hale*, Chief Justice) such an Imployment, that an Action should lie for scandalizing. *Ventris 1 Part 275. Bell against Thatcher.*

Of a Stage Coachman's Wife. The Plaintiff declar'd, that he kept a Stage-Coach, and got his Livelihood by carrying of Passengers, and that the Defendant spoke such scandalous Words of his Wife, that so reflected upon him,

and render'd him so ridiculous, that no Body would ride in his Coach, and he thereby lost his Customers. This differs from the Case of an Inn-keeper, whose Wife's ill Qualities might make the House troublesome to the Guests; but a Stage-Coachman could receive no probable Prejudice in his Trade by defaming of his Wife, or at the least the Plaintiff should have declar'd what Customers he had lost in particular. *Ventris 1 Part 348. Anonymus.*

Of a Member of Parliament. Of one who had been a Member of Parliament. Your Master is a Papist; when he is at Home he goes to Church, but when he is at *London* he goes to Mass; Sir J. C. and he were both Pensioners at the Time of the Long Parliament. *Ventris 2 Part. Sir Lionel Walden against Mitchell.*

Words in the Præter-Tense.

Of a Justice of Peace: *Scil.* He was a debauch'd Man, and was not fit to be a Justice of Peace, no Action lies. *Rolls Abr. 48. L. 1.*

Thou hadst the *French Pox*, no Action lies. *Ib. 48. L. 2.*

Words in the Future-Tense.

He will be Bankrupt within Two Days, an Action lies, for *præsent occasio* *Ruine.* *Rolls Abr. 49. O. 2.*

He

He will rob 7. S. within Two Days, an Action lies. *Ib.* 49. O. 3.

If he might have his Will, he would kill, &c. (or do any other Thing that is Actionable); an Action lies, tho' the Words are not Affirmative, but refer to his Will. *Ib.* 49. O. 1.

Words in the Præter-Tense, where they charge him with an Intention.

He lay in wait to rob him; the lying in wait is a bad Act, and a great Offence; tho' it be not Felony, an Action lies. *Rolls Abr.* 5. Q. 2, 3.

He has set Men on to rob me, an Action lies, tho' he was not robb'd. *Ib.* 52. Q. 6, 7.

She did attempt to cut her Husband's Throat, an Action lies. *Ib.* 51. Q. 9.

Thou hast procur'd 7. S. to come Thirty Miles to commit Perjury, and hast given him Ten Pounds for his Pains: An Action does not lie; for the Hiring, without committing the Perjury, is no Offence. *Ib.* 51. Q. 5.

If no ill Act be done, as he keepeth Men to rob me; no Action lies for those Words. *Ib.* 51. Q. 4.

Thou would'st have kill'd me; no Action lies. *Ib.* 51. Q. 8.

Adjective Words.

Bankrupt Knave of a Tradesman, &c. (i. e.) Knave and Bankrupt; an Action lies, for both are Substantives. *Rolls Abr.* 47. f. 1, 2.

Bankruptly Knave, (i. e.) Bankrupt-like Knave; no Action lies. *Ib.* 47. f. 3. But *Levinz* 1 Part 90. *Booth* against *Leach*, seems to the contrary.

Murdering Rogue, an Action lies. *Ib.* 47. f. 6.

Murderous Quean, no Action lies. *Ib.* 47. f. 4.

Steal Sheep; an Action lies. *Ib.* 47. f. 5.

Traitourly Rogue, Actionable. *Levinz* 1 Part 90. *Booth* against *Leach*.

Traiterous Knave, Actionable. *Croke* 3. 171. *Ward* against *Thorn*.

Disjunctive Words.

He was whip'd for stealing of Sheep, or else was burnt in the Hand or Shoulder, (with an Averment, that he did not commit any such Felony) no Action lies; for it implies no Certainty by reason of the Words [*or Shoulder*]; But afterwards he brought a new Action for so much of the same Words which were Actionable. *Rolls Abr.* 48. N. 1.

Words

Words Actionable by Implication.

I know what I am, and I know what he is; I never bugger'd a Mare. This was by Implication a Charge of Buggery upon the Plaintiff. *Levinz 2 Part 150. Snell against Wabling. Ventris 1 Part 276. Anonymus.*

I am no Traitor; I have seen you in Rebellion: It must be intended a Traiterous Rebellion, and if any Pardon hath been since, the Defendant ought to have shew'd it in Pleading. *Levinz 1 Part 251. Dalton against Suddle.*

Words conditionally spoken.

I will prove him Perjur'd, or else I will bear his Charges; an Action lies. *Rolls Abr. 39. F. 3.*

Words directly or implicitly Affirmative.

I think in my Conscience, if he might have his Will, he would kill, &c. an Action lies, tho' the Words refer to his Conscience, and to the Will of another. *Rolls Abr. 49. P. 1.*

She went to the Spaw to be cur'd of the French Pox. *Ib. 49. P. 5.* An Action lies; for

it is an imply'd Affirmative, that she hath that Disease.

He is in *W. Gaol* for stealing of a Mare ; if the Plaintiff doth not aver that he never was in Gaol for stealing a Mare, an Action doth not lie, for he doth not affirm that he stole a Mare. *Ib.* 49. *P.* 2, 3. See *Levinz* to the contrary, 1 *Part* 92. *Crawford* against *Middleton*. But an Action doth lie, if he saith, I do accuse him for, &c. *Ib.* 49. *P.* 6. Or I will make him an Example for, &c. *Ib.* 96, 49. *P.* 4. Or we will put him in the Pillory for, &c. *Ib.* 50. *P.* 10. For these Words are directly Affirmative; as these Words, I arrest him for Felony. *Ib.* 72. *Z.* 10. But inquire of that, for it was more lately resolved, that it is not any Affirmative to say, I charge him with Felony, for he may charge him upon Suspicion of Felony, as if the common Report be that he did it. *Ib.* 73. *Z.* 21.

Where the Subsequent Words shall be Explanatory of the first, and where they are Cumulative.

Thou art a Thief, for thou, &c. [*for thou, &c.*] explain, and are given for a Reason of the former Words, and the Action lies according to the Explanation. *Rolls Abr.* 5, 1. *R.* 2, 3.

Thou art a Thief, and hast ; [*and hast*] are Cumulative, and by way of Addition, and do not

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not take away or abridge the Force of the first Words. *Ib.* 51. R. 1, 4, 52. R. 5, 6, 7, 8.

She is a lewd or common Woman of her Body, and has the Pox; neither the first Words nor the Subsequent are Actionable of themselves, but being conjoin'd with an [*&c.*] the first explain the Subsequent, and shew that he intended the *French Pox*. *Ib.* 66. T. 14.

Thou art a Bawd, and fetchest young Men to young Women; [*and fetchest*] were adjudged Explanatory, and not meerly Additional, and the first Words are not Actionable without the Explanation of the Subsequent. *Modern Reports* 31. *Gavell and Perkerd.*

Where the Circumstances shew an apparent Intention of dubious Words in themselves that they are Slanderous, an Action lies.

Vide Rolls Abr. where the Words shew, that he intended the *French Pox*. 66. T. 14, 15, 16, 17, 67. T. 18, 19, 20, 21, 22, 23, 24, 25.

He is a Rebel: No Action lies; for that it may be, that a Proclamation of Rebellion was granted against him out of the *Chancery*. *Ib.* 69. T. 37. But otherwise if he adds, And all that keep thee Company, and thou art not the King's Friend. *Ib.* 69. V. 38.

Thou art no true Subject to the King: No Action lies; for the Word [*true*] is uncertain,
in

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in as much as no Body is as true as he ought to be. *Ib.* 69. *T.* 39.

Thou art a perjur'd Fellow, for thou wast forsworn before the Lord Bishop of N. an Action does not lie, for it shall not be intended in his Court. *Ib.* 69. *V.* 21. Tho' by the Declaration, *scil.* that the Plaintiff was Keeper of the *Marshalsea* of the King's Bench, it appears that the Plaintiff might have the Custody of Priests; yet in as much as the Defendant said, that he shall be indicted for it, he shewed that he did not intend a lawful Harbour. *Ib.* 69. *T.* 40. and therefore the Action lies.

Thou hast stolen my Wood. *Ib.* 70. *T.* 48. My Turfs. 70. *T.* 49. An Action lies, for they shall not be intended growing.

Thou art a Corn-stealer. *Ib.* 70. *T.* 50. Thou stolest my Corn. 70. *T.* 51. My Turf, 70. *T.* 54. An Action doth not lie; for it may be well intended, that he intended Corn or Turf growing.

Thou hast feloniously stolen my Corn, an Action lies. *Ib.* 70. *T.* 52.

He has stolen Corn from S. *Ib.* 70. *T.* 53. an Action lies.

He stole a Pye out of B's House: No Action lies; for it may be he intended a Bird so call'd. *Ib.* 71. *T.* 55.

Thou art Drunk, and I shall never hold up my Hand at the Bar as thou hast done: No Action lies, for it may be that he held up his Hand

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Hand at the Bar for Drink, and not for Felony. *Ib.* 71. *T.* 56.

Thou art a Knave, and did'st consent to the taking of a 20s. Piece out of *B's* Pocket: No Action lies; for it does not appear that he intended a Felonious taking of it. *Ib.* 71. *T.* 57.

Of a Physician. He hath kill'd *S.* with Physick: No Action lies, if he did not say wilfully or maliciously, &c. *Ib.* 71. *T.* 58.

You commit Sacrilege every Day, not Actionable. *Levinz* 1 Part 250. *Gaudy* against *Smith*.

Scandalum Magnatum, for saying, I met my Lord's Servant whom I knew not, but my Lord sent after me to take my Purse; tho' it is not said positively my Lord sent him to take my Purse, yet it is *tantamount* in the Understanding of the common People, and such oblique Words have been adjudged Actionable in the Case of a common Person, much more in the Case of a Peer: As I heard a Bird sing that you have committed Felony, or I dream'd so; and tho' it is not said Feloniously to take his Purse, which may be a good Exception in Case of a common Person, yet is none in Case of a Peer. *Levinz* 1 Part 277. *Earl of Peterborough* against *Sir John Mordaunt*.

Where

Where Words shall be taken in the mildest Sense.

If Words are dubious, and may receive a double Interpretation in common Acceptance, one Way Actionable, and the other Way not; if they sound in Slander in common Acceptance, they shall not be strain'd to a foreign Construction to make them not Actionable, *Rolls Abr.* 71. Z. 1, 2.

As thou did'st Poison. *Ib.* 71. Z. 3, 72. Z. 6. Murder. 72. Z. 5. Or kill J. S. 72. Z. 4. Or any Man generally. 77. E. 1, 77. E. 3. contrary to a former Resolution. *Scil. Rolls Abr.* 72. Z. 7. For in common Discourse it is taken for a felonious Killing, and therefore an Action lies.

B. had the Use of her Body (by which she lost, &c.) These Words import and imply in common Sense and Acceptance an unlawful and dishonest Use, and therefore an Action lies. *Ib.* 72. Z. 7.

Thou hast Two Wives, and I will do the best I can to hang thee. *Ib.* 76. D. 1. An Action lies.

Doctor B. is yonder in the Church, and is robbing the Church: An Action lies; for it appears, by the first Words, that he intended the material Church. *Ib.* 76. D. 2.

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He hath stolen by the High-way Side : No Action lies ; for it may be an Apple off a Tree. *Ib.* 73. *Z.* 12.

He was reprov'd in his Oath at the Assizes : No Action lies ; for he was not forsworn if he was reprov'd only in the Circumstances of his Oath. *Ib.* 73. *Z.* 13.

Thou did'st pilfer away my Goods : No Action lies ; for it does not appear that he intended Feloniously. *Ib.* 73. *Z.* 14.

Thou did'st filch from *J. S.* 4^l. No Action lies ; for Filch is of an uncertain Sense as Pilfer or Cheat. *Ib.* 73. *Z.* 15.

He is a Pick-pocket, and took 12 s. out of my Pocket : No Action lies ; for it may be done as a Trespass, or in Jest. *Ib.* 73. *Z.* 20.

Where the first Words being uncertain take away the Force of the Subsequent, which had been Actionable of themselves.

He hath stolen my Piece, (*inuendo* a certain Gun, does not aid it) and I charge him with flat Felony ; no Action lies. *Rolls Abr.* 72. *Z.* 11.

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*Words in a Language not understood by
the Auditors: No Action lies.*

Rolls Abr. 74. A. 1, 2, 3.

Words Repugnant.

Tho' a *Feme Covert*, (i. e.) a Wife, cannot have Goods, yet in common Discourse it is well known, that she accounts her Husband's Goods her Goods. *Crook 3, 52. Powel and his Wife against Plunket*, an Action lies against her for saying, he hath stolen my Goods, contrary to *Rolls Abr. 74. B. 1. Ergo Quare.*

Thou hast stolen me (*inuendo Defendentem*) 100 of Slate: No Action lies; for he cannot steal the Defendant. *Rolls Abr. 74. B. 3.*

Where the Person slander'd is sufficiently certain, and where not, without any Communication or Discourse of him alledged.

Where the Words shew apparently whom he intended. *Rolls Abr. 75. C. 1, 2, 3, 4, 5.*
An Action lies.

Thou hast committed Burglary in breaking his House, and stealing his Goods; no Action lies, if there be no Discourse of any Person. *Ib. 71. T. 59, 78. E. 8.*

The

Action upon the Case. 31

The Boxes have clipp'd Money. *Ib.* 79.
H. 9. No Action lies.

Without Averment.

He hath kill'd the Cook, Servant, Wife, or Son, or Aunt of *S.* an Action lies, without any Averment that *S.* had any Cook, or, &c. or that he died; for it shall be intended that he had a Cook, and that he is dead, till the contrary be shewn and appears in the Record, in as much as the Defendant hath said, &c. *Rolls Abr.* 77. *E.* tot.

He stole *B.*'s Horse, an Action lies, and it is needless to aver that *B.* had any Horse. *Ib.* 77. *E.* 2.

Of a Gaoler. He had never a Sheet on his Bed, until he let Prisoners go out of the Gaol to steal them: The Plaintiff ought to aver that he had Sheets on his Bed, for otherwise no Action lies. *Ib.* 77. *E.* 9.

Thou usest me now as *B.* did, when he stole my Cushion: It ought to be aver'd that *B.* stole his Cushion, otherwise no Action lies; for it is not directly said, that *B.* stole his Cushion. *Ib.* 78. *F.* 1.

If he will justifie his Answer in Chancery to be true, I will prove him Perjur'd; an Action lies, without any Averment that he justified his Answer to be true. *Ib.* 78. *F.* 2.

I have

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I have an honest Man in *L.* who will prove that *W.* said he had kill'd a Man in *Ireland*, and bury'd him in the Sands, and the Plaintiff avers that he never said so: He need not aver that he did not kill a Man in *Ireland*, nor that there is not any Man in *L.* that will prove that the Plaintiff said, for the Words are not laid as spoken of the Relation of another, for then it ought to be aver'd, that the other did not so relate; but here it is the Undertaking of the Defendant himself, that he had a Man in *L.* that would prove that the Plaintiff said so, *scil.* That he had kill'd a Man in *Ireland*, and bury'd him in the Sands. *Levinz 3 Part 171. Williams against Lewis.*

Averment. Inuendo.

My Master *B.* adding his Name, *scil.* *B.* has stolen, &c. *B.* may aver, that he said the Words of him without averring that he was his Master. *Rolls Abr. 79. H. 2. Thy Landlord H. is a Thief. Ib. 80. H. 3.*

Where is this Baker? He hath perjur'd himself; *B.* who is a Baker may have an Action against him, averring only that he said the Words of him, naming himself Baker in the Declaration, tho' he doth not alledge that there was any Communication of him before, for the Person is sufficiently describ'd. *Ib. 79. H. 5.*

Without

Without any Communication, my Brother is Perjur'd. The Brother ought to aver, that he spoke the Words of him, being his natural Brother; but the Declaration is good, without averring that he hath not any more Brothers, for it may well be intended that they were of a Person certain. *Ib.* 79. *H.* 6. The like; your Son is a Thief. *Ib.* 79. *H.* 8.

An *inuendo* repugnant doth not hurt, if the Action be maintainable without it. *Ib.* 83. *J.* 9. 10.

Your Father (*inuendo* the Plaintiff) hath killed, &c. the Declaration is not good, because it is not averred that he was Father to him of whom the Words were spoken, nor that he had any Son there at the time of speaking the Words. *Ib.* 85. *K.* 9.

If the Plaintiff declares, that upon a Communication of the Plaintiff the Defendant said, My Landlord (*inuendo* the Plaintiff) is a Thief, without averring that he was his Landlord, the Declaration is not good, and Judgment was arrested. *Ib.* 84. *K.* 1. The like; thy Master, or thy Husband's Master, is a Thief. *Ib.* 79. *H.* 4.

An Averrment in an *Inuendo* is not sufficient, as (*inuendo S. defunctum*) is not a sufficient Averrment of the Death of *S.* *Ib.* 83. *J.* 4. (*Inuendo* the Plaintiff being the Brother of *S.*) is not a sufficient Averrment that he is his Brother. *Ib.* 84. *K.* 2.

Thou art a Thief (*inuendo* the Plaintiff) the Declaration is not good, without averring that the Words were spoken to him, or of him. *Ib.* 83. *J.* 7. 85. *K.* 7. upon a Writ of Error; But otherwise if the Declaration had been, that the Defendant having Discourse with the Plaintiff, said, Thou art a Thief. *Ib.* 85. *K.* 8.

Thou took'st a false Oath against me before Justice *S.* *inuendo* *J.* *S.* Justice of Peace; because it does not appear that *J. S.* was a Justice of Peace any otherwise but by the *Inuendo*, which is not sufficient, Judgment was stay'd after Verdict. *Levinz* 3 Part 166. *Gurneth* against *Derry*.

Without Averrment of the Signification of English Words, or the putting of others into English.

The Court ought to take Information of *Welsh* Words by *Welchmen*. *Rolls Abr.* 86. *L.* 5.

The Justices ought to take notice of themselves of *English* Words spoken, according to the Phrase of any County, as, Thou art an Healer of Felons, being inform'd, that in any Country they are taken for a Furtherer of Felons. *Ib.* 86. *L.* 1.

An Averrment shall not enforce Words against the true Sense of them, which is well known to the Justices; as if it be averred, that in

Exeter

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Exeter where these Words were spoken, *scil.* Thou are not worth a Groat; do *tantamount* to, Thou art a Bankrupt. *Ib.* 86. L. 2. the Averrment is not good.

If it be averred, that these Words in *London* where they were spoken, *scil.* Thou art a beggarly Knave, and I will make thee fly *England*; have the same Sense, as if he had call'd him Bankrupt; the Averrment is good. *Ib.* 86. L. 2.

If it be averr'd that these Words to a Shoemaker of his Journeyman, *scil.* I warrant who-soever hath him, he will cut him out of Doors; signifie *undo* him, the Averrment is good. *Ib.* 86. L. 4.

Plea in Bar.

Case for Words interpreting them, the Defendant pleads in Bar a former Action for the same Words without Interpretation, &c. a good Bar. *Levinz* 3 Part 248. *Gardner* against *Helvis*.

No joining.

Two or more may not sue in one Action for several Causes, tho' of the same Kind. *Coke* upon *Littleton*, 195. *Crook* 2. 647. So they cannot join in a Suit for Slander. *Dyer* 19.

For a Nuisance.

Common Nuisance.

Hindering one's going in a Common Way, is Indictable, but not Actionable. *Rolls Abr. 88. N. 1.* But if a Man has any particular or special Damage, it is Actionable. *Ib. 88. N. 3, 5.*

Digging of a Pit in the Waste adjacent to the Common Way, is no Wrong, and therefore not Actionable. *Ib. 88. N. 4.*

Private Nuisance.

An Action lies for the Lord if his Tenant without his Licence erects a new Dove-House; as in the Case of setting up a Mill to the Nuisance of my Mill. *Ib. P. 2. 139. F. 2.*

An Action lies for every particular Copyholder, if a Stranger prejudices the Common. *Ib. 89. N. 8.*

Tho' it is not any publick Nuisance for the Lord of a Mannor, or for a Tenant, to erect a new Dove-house upon his own Tenement, without the Lord's Licence, as *Ib. 2. P. 138. F. 1.* And tho' it is not a private Nuisance for the Lord of a Mannor to erect, &c. for when
he

he parts with the Tenements, the Law saves to him the Rights and Pre-eminences which are due to him as Lord; as, 2 *P.* 139. *F.* 1. Yet if the Copyholders have Common by Prescription in the Wastes of the Lord, and the Lord stores the Wastes with Conies, every Copyholder may have an Action upon the Case against the Lord, averring that thereby his Common is impair'd. *Ib.* 106. *M.* 15. Where it appears, that an Action upon the Case in nature of a Disceit, doth also lie against the Lord.

An Action lies for stopping up a Way which a Man ought to have, without shewing any Title by Prescription, or otherwise. *Levinz* 3 *Part* 266. *Wingsford* Prothonotary against *Wollaston*. *Levinz* 2 *Part* 148. *St. John* against *Moody*.

In an Action for stopping of his Lights, the Plaintiff declar'd, that he was possessed for divers Years (and did not ~~say~~ how many) and that Time out of Mind the Light came in at the Windows. This was allow'd a good Form of alledging the Prescription. *Ventris* 1 *Part* 248. *Anonymus*.

In Action for stopping of his Light, a Man need not declare of an ancient House. *Ventris* 1 *Part* 237, 239. *Cox* against *Matthews*.

In Nature of a Disceit.

In what Cases it lies.

IT lies where Case upon *Assumpsit* lies; as if a Man for a certain Sum undertakes to importune *7.* for a Leale for Years for me of certain Land, and he importunes *7.* for a Leale for himself. *Rolls Abr. 10. P. 17.*

It does not lie where there is Damage without Injury. *Ib. 107. N. 10. and 101. abinde.*

It lies tho' there be only a *Non Feasance*, as not to pay Toll, or to deny to deliver Goods, by which he loseth much Profit of the Goods, and tho' other Actions lie. *Ib. 103. K. 1, 2.*

Trespas upon the Case lies where Trespas upon the Peace lies, if any Damages be alledged, as that by reason of bad Workmanship the Timber of the House was rotted. *Ib. 104. K. 3. Vide 105. M. 5, 10.* But if the Declaration be *Quare Vi & Armis*, by which he lost, &c. that is, a general Action of Trespas only lies, & *Simpliciter Vi & Armis*. *Ib. 105. M. 1, 2. P. 55, 6. T. 10.* But if it appears upon the Evidence in this Action, that the Act was Felony (for the Defendant cannot plead it) Trespas lies not; for he ought to indict him, and then he is to have Restitution of his Goods, *scil.* of those that are stolen, and of no others,
by

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by the Statute of 21 H. 8. cap. 11. But Trespass if the Defendant hath his Clergy, and is burnt, &c. *Ib.* 55. 7. T. 12, 23, 24. *Vide Jones's Reports*, 149. *Markham* against *Cobb*. Where if the Defendant affirms, that of Record the Goods were stolen, the Plaintiff cannot traverse that they were not stolen.

Where it lies for any Inhabitant of a Village, or Tenant of a Mannor.

It lies for any Inhabitant of a Village, if his Watering-Place for his Cattle be stop'd, for such a Nuisance is not presentable. *Rolls Abr.* 110. O. 3.

Against Officers.

It lies not against a Judge of Record or a Sheriff, for Error and false Judgment lies. *Rolls Abr.* 92. Q. 1, 2.

It lies against a Sheriff for taking a false Return of the Head-Bailiff of a Franchise in the Name of the Head-Bailiff, for he is no Officer of the Law, and of them the Sheriff ought to take notice. *Ib.* 99. F. 2.

It lies if a Man arrested upon mean Process escape before Imprisonment. *Ib.* 99. E. 1.

It lies against the Bailiffs of a Corporation, being the Gaolers, upon an Escape before Judgment. *Ib.* 99. E. 2.

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Against Deputies.

It lies against an Under-Sheriff. *Rolls Abr.* 94. R. 1, 4. An Under-Bailiff. *Ib.* 94. R. 5. For the Deputy may be punish'd for Matter of Falsity, and for Personal Wrong, or the Sheriff himself, &c. at the Election of the Party. *Ib.* 94. R. 2, 4.

Against Servants of Officers.

It lies not against a Sheriff's Bailiff, be he Special or otherwise, upon an Escape, for he is only a Servant to the Sheriff. *Ib.* 94. R. 3.

For Officers.

An Escape made to the Bailiff of the Sheriff, is made to the Sheriff himself. *Rolls Abr.* 97. B. 1.

For an Officer against his Servant.

It lies for the Sheriff against his Bailiff upon an *Assumpsit* in Law, who took a Man in Execution that escap'd. *Rolls Abr.* 99. B. 3, 98. C. 1, 2.

For Servants of Officers.

It lies for a Bailiff against a Man who escapes from him, if the Bailiff was charged by the Sheriff. *Rolls Abr.* 98. C. 1, 2.

It lies upon a Warranty in Law against Men in their Profession, Calling or Trade, for Misdoing or Negligence.

Against a Counsellor. *Rolls Abr.* 91. P. 9, 10, 11, 12. 10. P. 67.

Against an Attorney. It lies not against him if he makes Default at the *Nisi Prius*, or in a Franchise, for he is not bound to go thither. *Ib.* 95. 2, 3.

Against a Surgeon. *Ib.* 91. P. 14. For the Master. *Ib.* 98. B. 5.

Against a Farrier. *Ib.* 91. P. 13, 15, 16.

Against a Merchant. *Ib.* 90. P. 4.

Against a Vintner. *Ib.* 90. P. 1, 2.

Against the Servant of a Vintner: It lies not against the Servant of a Vintner for selling Wine, tho' he knows it to be corrupted, but it lies against the Master, tho' he doth not command the Servant to sell it to this particular Man. *Ib.* 95. S. 3. T. 1.

Against any Man. It does not lie for selling a dead Horse. *Ib.* 90. P. 4.

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It lies for selling the Goods of another as his own Goods, or pretending to have Authority to sell them. *Ib.* 90. P. 5, 6. 91. P. 7, 8. And the Buyer shall not stay till the proper Owner has seiz'd the Goods, or interrupted him. *Ib.* 98. D. 1.

Where it lies upon an expresse Warranty, or upon a Promise, or an Affirmation.

It lies, if the Vendor warrants the Thing to be without such Faults that are not subject to View without any Skill, as the Imperfections of an Horse. *Rolls Abr.* 97. Z. 14. 96. Z. 2, 3, 9, 10.

It lies, if one that sells Sheep warrants that they shall remain sound for the space of a Year afterwards. *Ib.* 97. A. 1.

It lies, if a Man for a Consideration warrants that such a Mare shall return safe from such a Place, or that such a Man shall live a Year. *Ib.* 97. A. 2, 3.

It lies, if a Man for a Consideration promises to keep the Sheep of another sound for a Year, but otherwise it is if they were unsound before. *Ib.* 97. A. 4.

It lies, if a Man warrants his Goods to be but of such a Weight to the Carrier, who by the Deceit of the Weight loses a Horse by excessive Labour; for he may take the Goods upon the Promise of another without weighing them,

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them, for the Weight is not discernable by the View. *Ib.* 96. Z. 12. But it is doubtful if he had only affirm'd, that his Goods were but of such a Weight, for that is not any Warranty. *Ib.* 97. Z. 13. But it seems that it doth lie, for *Sydersfn* 1. 146. *Lenkins* against *Cliffe*. If a Man affirm, that a Jewel is worth so much, or that Land is worth so much a Year, the Action doth not lie; but otherwise of Rent, because it is certain; but to affirm that J. S. would have given so much for the Land, is not Actionable.

Where a Duty arises by reason of a Man's Profession, Calling, or Trade, or selling of Land, or of his free Undertaking, as to carry my Goods which are perish'd or lost, &c. tho' it be alledg'd that the Defendant promis'd expressly to do the Thing, yet the Action lies without any Consideration alledg'd, *scil.* in nature of a Disceit in his Misdoing, or Negligence in not Doing, which are the Cause of the Action, and not the *Assumpsit*. *Ib.* 10. P. tot Pag.

It lies against the Seller for affirming to the Purchaser, that the House was let at a greater Rent than it was, upon which he gave so much more for it. *Levinz* 1 Part 102. *Ekins* against *Tresham*.

It lies not against the Husband and Wife, for a false Affirmation of the Wife that she was single, upon which the Plaintiff marry'd her upon her Request, because the Wife cannot by any Contract or Agreement charge her Husband.

band. *Levinz* 1. 247. *Cooper* against *Wicham*.

In Nature of a Conspiracy.

It lies for him that is indicted of a common Trespass, and acquitted. *Rolls Abr.* 112. P. 10.

It lies not because that which was given in Evidence is not of Record. *Ib.* 100. P. 1.

It lies for a Disceit, in conspiring to cause a Man to be arrested upon a Plaint in the Court of Record of the Sheriff of London, *de placito Transgressionis super Casum* to his Damage of 300*l.* without Cause, by *Saunders*. *S. a. i. Report.* 228. *Skinner* against *Gunton*. And the Plaintiff need not declare that the first Action was determin'd, for the Ground of the Action is the causeless troubling of him to put in Bail. And tho' the Action was brought against Three, and One only found guilty, the Action does not fail, because such an Action in nature of a Conspiracy lies against One. *Ventris* 1 Part 12, 18. *Skinner* against *Gunter*.

It lies not if the Indictment is not good, for this Action is all one as a Conspiracy as to that. *Rolls Abr.* 112. P. 13. 110. P. 23.

If the Declaration be for stealing the Goods of a *Feme-Covert*, (*i. e.*) a Wife, it shall be intended before, *scil.* whilst she was sole, (*i. e.*) single, after Verdict. *Rolls Abr.* 111. P. 4.

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It lies if *Ignoramus* was found, for a malicious Prosecution is sufficient to maintain this Action without Acquittal, tho' not an Action of Conspiracy. *Ib.* 114. *R.* 2, 3, 5, 6. 115. *R.* 7.

It lies for preferring only a Bill of Indictment of Felony to the Grand Jury, tho' the Plaintiff doth not averr that he was in the Gaol, or that the Justices of Gaol-Delivery had Jurisdiction, for it is a great Slander and Defamation; by *Rolls* against the Court. 111. *P.* 7. in arrest of Judgment.

It lies against Church-Wardens, for presenting a Man before the Archdeacon of S. upon a Report of his living in Adultery with, &c. without averring that it was within his Jurisdiction, for if it was not, his Trouble was the greater. *Ib.* 12. *P.* 9.

It lies for him that is indicted for a common Barretor. *Ib.* 112. *P.* 11, 12.

It lies, if *Conspiratione inter eos habita*, one of them is found Not Guilty, for it differs from a Writ of Conspiracy. *Ib.* 111. *P.* 5.

Prosecution upon a good Cause of Suspicion.

It lies not for a Broker, if the Goods stolen are found in his Shop. *Rolls Abr.* 113. *Q.* 3.

It lies not for A. against D. if the Daughter of

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of *D.* complain'd that *A.* had ravish'd her. *Ib.* 113. Q. 2.

It lies for *J. S.* if *B.* casually lost Two Sheep, and afterwards finding *J. S.* chasing Twenty Sheep along the High-way, mark'd with 12 several Marks, procures the Constable to arrest him, if *B.* does not averr that his Two Sheep were stolen; for if no Felony was committed the Arrest was not lawful, or at least a greater Cause of Suspicion that they were stolen, than the casual Losing of them.

Declaration.

It ought always to be alledg'd, that the Prosecution was False and Malicious, and not False and Injurious, for the Falsity makes it Injurious, but not Malicious. *Rolls Abr.* 112. P. 8. And tho' it be Malicious, yet if it be not False, the Action doth not lie. *Ib.* 111. P. 6. It ought also to be alledg'd, that he was acquitted or discharg'd by finding *Ignoramus*, or some other Way. *Ib.* 114. R. &c. and none of these Defects are help'd by a Verdict.

For Doing, not Doing, or Misdoing.

For Waste.

IT lies for a Copyholder in Remainder, against the Copyholder for Life who commits Waste; per *Pemberton & Levinz.* *Levinz* 3 Part. *Jefferson* against *Jefferson.* le

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It lies for him in the Reversion in respect of the Inheritance, and for the Tenant in Possession in respect of his Possession for Damage done to his House, and Satisfaction given to the One, is no Bar to the Other. *Levinz 3 Part 209. Biddleford against Onslow.*

Double Return in Parliament.

It lies not for a Double Return upon Election of a Member of Parliament before the Matter is determin'd there, nor after. *Levinz 3 Part 29. Onslow against Rapley. Levinz 2 Part 14. Sir Samuel Barnardiston against Sir William Somers, lately Sheriff of Suffolk.*

Suits in Law.

It lies for vexatious suing a Man without reasonable Cause. *Levinz 3 Part 210. Webster against Haigh.*

Indicting.

It lies for a Justice of Peace against one who indicts him for Matters of Execution of his Office, as in this Case for reseuing a Vagabond out of the Constable's Hands who brought him before him. *Ventris 1 Part 23, 25. Sir Andrew Henly against Dr. Burstall.*

Dilapi-

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Dilapidations.

It lies for Dilapidations by a Parson against his Predecessor. *Levinz 3 Part 168. Jones against Hill.*

Hurt by a Coach-Horse.

It lies against Master and Servant for a Passenger that is hurt by an unruly Horse in a Coach, drove by the Servant in his Master's Absence; for it is said, that it was *improvide & absque debita consideratione ineptitudinis Loci*, and it shall be intended that the Master sent the Servant to train the Horses. *Levinz 2 Part 172. Michel against Allestree, &c. Ventris 1 Part 295. Anonymus.*

Not appointing a Place for a Carter hired to unload.

It lies not for not appointing a Place in such a Town, where a Carter who is hired by the Defendant to carry his Goods should set them down, whereby some of the Horses took Cold and died, for he might have unloaded in any convenient Place, or have taken the Horses out of the Cart. *Levinz 2 Part 196. Virtue against Birde.*

Causing

Causing a Man to be turn'd out of his Office.

It lies for causing an Officer of the Custom-house to be turn'd out of his Place, for the Action is not founded upon the false Oath, nor the Petition, for they are but an Inducement to prove the malicious Procurement of having him turn'd out, &c. *Levinz 1 Part 119. Cox against Smith.*

Keeping a Man's Wife from him.

It lies *de Uxore abducta*, and keeping of her from him. *Ventris 1 Part 103. Ward against Rich. Vide Tit. Pleadings.*

Attaching another Man's Goods.

It lies for malicious attaching the Goods of another, tho' it is not said *Scienter*, nor that the Defendant knew that the Goods were the Plaintiff's. *Levinz 1 Part 129. Sanders against Powel.*

Printing a Petition to the Parliament.

It lies not for Printing and Delivering a Petition containing scandalous Matter, by way of Complaint or Grievance, to several Members
E of

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of a Committee of Parliament. *Levinz* 1 Part 240. *Lake* against *King*.

Excommunicating.

It lies for Excommunicating a Man without Cause. *Lev.* 1 P. 292. *Hoskins* against *Matthews* and *Clark*. *Ventris* 1 P. *Hoskins* against *Matthews*.

Erecting a Market.

It lies for erecting a Market without any lawful Warrant, to the Damage of another's Market. *Levinz* 1 Part 296. *Tarde* against *Forde*. Tho' Seven Miles off, and kept upon another Day. *Ventris* 1 Part 98. *Sard* against *Ford*. Note, they differ in the Name of the Plaintiff, as they do often in the Name either of Plaintiff or Defendant, or both, where they report the same Cases.

Not Repairing a Fence.

It lies for not repairing a Fence against the Tenants and Occupiers of such a Parcel of Land, who have Time out of Mind maintain'd the same, where by reason of its lying open, the Plaintiff's Mare fell into a Ditch, and was drown'd, &c. *Ventris* 1 Part 264. *Anonymus*.

Not Grinding at a Mill.

It lies for not grinding at his Mills, upon a Prescription, that Time out of Mind the Tenants of the Mannor had Ground, &c. *Ventris* 1 Part 167. *Sir John Coriton* and *Harvey* against *Lithby*. *Vide Tit. Pleadings*.

For

For suing in the Admiralty for a Thing done at Land.

It lies upon the Statute of 2 H. 4. for suing in the Admiralty for a Thing done at Land; *scil.* in this Case, for a Suing in the Admiralty for staying a Ship going to the *East Indies*, tho' there be no Parties, Plaintiffs or Defendants; but only a Process for staying the Ship for Suits there, are against the Ship it self, and the Defendants were the Prosecutors in the Suit; and the Statute 2 H. 4. gives an Action and double Damages against the Prosecutor for the Party grieved; and tho' this in the Admiralty was by the Command of the King, yet it is within the Statute. *Levinz 3 Part 351. Sands qui tum, &c.* against Sir *Josiah Child*; *Franklin and Leach.*

Denying a Poll.

It lies against the Lord Mayor of *London* for denying a Poll upon the Election of a Bridge-Master, and want of Avertment of Plurality of Votes, is cured by saying, *Per quod perdidit Officium.* *Levinz 2 Part 50. Sterling* against *Turner.* *Ventris 2 Part 25. Methuselah Turner* against Sir *Samuel Sterling.* *Ventris 1 P. 206.* Sir *Samuel Sterling* against *Turner*, upon a Writ of *Error.*

Retaining another Man's Servant.

It lies without Inticement, having had Notice that he was the hired Servant of another, and departed without Licence. *Levinz 2 Part 63. Fancet against Beanes and Ux.*

Fire.

If Fire in a Man's House by Misfortune, *scil.* by the Negligence or Wilfulness of his Servant, Guest, or any one that comes into his House with his Leave or Knowledge, burns the House or Goods of another, this Action lies against the Master of the Family only; but it lies not if a Stranger against the Master's Will throws Fire into his House. *Rolls Abr.*

Against a Common Carrier.

Lies, if robb'd, or he otherwise loses the Goods, tho' the Owner after Delivery delivers them to another in the Boat, without discharging the *Hoy-man*. *Rolls Abr.*

Against

Against a Master of a Ship, or Partners.

Lies against him for Loss of Goods by Neglect of his Servants. *Levinz 2 Part 69. Morfe against Sluce.*

Lies not against him, tho' the Robbery be committed within the Realm, if there be no Negligence in him, because he is but Servant, the Owner takes the Freight. *Modern Reports 85. Morfe and Sluce.*

Lies against the Partners of a Ship for Damages done to Goods deliver'd to the Master, but all the Partners must be join'd. *Levinz Part 3. 258. Boson against Sandford, and Seven others.*

Against an Hostler.

Lies against a common Hostler of Age, tho' he be so ill that he be of *non sane* Memory, if the Guest (*i.e.*) one that either lodges there himself, or leaves his Horse, for which the Hostler has Benefit for the Continuance of it with him, be robb'd. *Rolls Abr.*

Lies against him, if he refuse a Guest upon a false Pretence. *Ib.*

Lies not if he refuse a Guest his House, being full of Guests, and the Party says he will

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shift among the other Guest, and there is robbed. *Ib.*

Lies not, if an Hostler goes to another Place with or without an Action of Law, telling the Guest that he cannot attend upon him, who afterwards is robb'd. *Ib.*

Lies not if the Guest will have his Horse sent to Pasture, for it is out of his Inn, by Means of the Owner; otherwise if the Hostler voluntarily or negligently leaves open the Gates of the Field, by which the Horse gets out, and so is stolen or lost. *Ib.*

Lies not against the Hostler, if the Guest delivers Goods to him upon another respect. *Ib.*

Lies against him, if a Man sends his Horse by his Servant to the Inn, and it be stolen; otherwise if another Man, that is not my Servant, rides my Horse to an Inn, for that does not make me his Guest. *Coke's Reports. Lib. 8. Calye's Case.*

Pleadings in an Action upon the Case, for Doing, not Doing, or Mifdoing.

DEclaration for turning the Water-Course of a Mill was good, without shewing that the Mill was an ancient Mill, and without saying, that the Defendant Time out of Mind, &c. hath repair'd the Damme, but call'd it only an ancient Mill, and without shewing that the Water hath Time out of Mind run that Way, but only that the Defendant hath diverted it from its ancient and usual Course. *Levinz 3 Part 133. Nulmes against Hobblethwayte.*

For a Seat in a Church appendant to a Messuage, is good against a Disturber, without prescribing in the Seat Time out of Mind, &c. having said, That he is seized in Fee of a Messuage, and that he, and all those whose Estate he hath in the Messuage, have had a Seat in the Church, and as often as there has been Occasion have repair'd it. *Levinz 2 Part 193, Merchant against Whitepane.* Where one prescribed, that he and all the Tenants of such a House have had all the Seats in such an Isle of the Church, he need not shew any Cause or Consideration for the Prescription, as that they have repair'd, &c. in this Action upon the

Case against a Trespasser or wrong Doer. But where one claims a Right against the Ordinary, he ought to shew a Title, by repairing, &c. *Levinz* 1 Part 71. *Bunton* against *Bateman*.

For not repairing a Fence, by the Defendants being one of the Tenants and Occupiers of such a Parcel of Land, who have Time out of Mind maintain'd the same, is good, tho' the Prescription is laid in Occupiers, and not shewn their Estate; and tho' that hath been adjudged naught in the 1 *Cro.* 445, and the 2 *Cro.* 665; for the Plaintiff is a Stranger, and presum'd ignorant of the Estate: But it is otherwise if the Defendant had prescrib'd. *Ventris* 1 Part 264. *Anonymus*.

The Plaintiff declar'd, That there were four ancient Mills within a Mannor, and that *J. C.* was seiz'd in Fee of Two of the Mills, and *J. H.* of the other Two, and laid a Prescription in each, that Time out of Mind the Tenants had Ground *Omne frumentum*, to be spent in their Houses at the Mills of *J. C.* or at the Mills of *J. H.* The Prescription is unreasonable; for a great deal of Corn is used which is not proper to grind. But the Action might be brought by both, otherwise there could be no Remedy upon the Prescription; for singly they could not bring it, because grinding at any of the Mills would excuse the Defendant. *Hale* said, The Declaration was naught, because it is that the Defendant ought to grind at the Mills of *J. C.* or *J. H.* which is true, if either of them hath an

an ancient Mill, tho' the other hath no Pre-
 tence or Right upon the Prescription; and
 therefore it ought to have been laid thus, That
 such Corn, &c. as was not ground at the
 Mills of J. C. ought to be ground at the Mills
 of J. H. and then have averr'd that the De-
 fendant's Corn was ground at neither of them.
Ventris 1 Part 167. Sir John Coxton and Har-
 vey against Lithby.

Spoiling a Coat in making.

The Plaintiff declar'd, that the Defendant
 being a Taylor, he retain'd him to make him
 a Coat well and artificially, and that the De-
 fendant made it *tam inepte negligenter & inarti-*
ficialiter, &c. Because he does not shew that
 he deliver'd him any Materials, the Action
 cannot lie for spoiling of them. Secondly, He
 does not shew wherein he had spoil'd the Coat,
 or what Defect there was in it, which ought
 to have been certainly set forth. *Ventris* 1 P.
 268. *Best* against *Tates*.

Action brought *de Ux.re abducta*, and con-
 cludes, *contra formam Statuti*, where there is
 no Statute in the Case, yet good; but Judg-
 ment was stay'd, because the Declaration was,
 that he kept her from him *usque* such a Day,
 which was some Time after the exhibiting of
 the Bill, and the Jury shall be intended to give
 Damages for the whole Time mention'd in
 the

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the Declaration. *Ventris 1 Part 103. Ward against Rich.*

In an Action against a common Carrier for losing Goods deliver'd; a Set of Gold Buttons is a sufficient Certainty, and so is a Set of Turks and Garnets, being intended to be well known to those that deal in such Things, in what Number the precious Stones are plac'd in such Sets. *Ventris 2 Part 78. Chamberlain against Cook.* He declares of Four Silver Pots, and of One Silver Pot, and doth not say, *uno alio Poculo*. If for want of the Word (*alio*) the Thing shall be taken to be the same, and so a Tautology, then the Jury shall not be supposed to have given Damages for the Thing so laid, and if in Construction they are to be taken as divers Pots, then Damages are well given for them. *Ib.*

Upon Trover and Conversion.

In what Cases it lies.

Conversion.

A Refusal upon my Demand, to deliver Goods found and not receiv'd from me, makes him a Trespasser, *ab initio*. *Rolls Abr.*

If one takes an Horse and rides, his delivering of it again is no Bar. *Ib.*

Where

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Where the Thing comes *per Trover*, (*i. e.*) by Finding, there ought to be an actual Demand and Denial prov'd; otherwise if an actual Taking be given in Evidence, *Syderfin* I. 264. *Bruen* against *Roe*,

Who shall have it.

1. A common Carrier, for he has a special Property in the Goods,

2. Husband and Wife, where the Trover is suppos'd before, and the Conversion after the Coverture, (*i. e.*) the Marriage; for this Action disaffirms the Property, being found upon the Wrong done before the Coverture, but by Two other Judges, the Husband only shall have the Action, because the Cause of Action is the Conversion, and that is subsequent to the Marriage. *Syderfin* I. 172. *Powes* and *Uxor* against *Marshall*.

The Property which the Lessor hath in the Timber by the Common Law always remains in him, notwithstanding the Statute of *Gloucester*; and therefore if a Stranger cuts down a Timber-Tree, and carries it or the Bark away, the Lessor for Years may have Trover against him, or Waste against the Lessee. *Crook* 3. 242. *Berry* against *Heard*.

Baron and *Feme*, (*i. e.*) Husband and Wife, he having the Land in Right of his Wife, if she survive him she shall have the Damages, and the

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the Action also. *Cro. 3. 437. Tregmiell and his Wife against Reeve.*

If a *Feme-Covert* takes Wares of a Shop-keeper against his Will, upon Pretence of buying them, an Action lies against the Husband; but if he sells them to her upon Trust, and delivers the Goods unto her, he shall not have an Action of Trespas against the Husband by reason of the Delivery. *Modern Reports 137. Manby against Scott.*

Baron and *Feme* cannot have an Action of Trover, and suppose the Possession in them both, for the Law transfers in point of Ownership the whole Interest in the Husband. *Telverton 166. Draper against Fulkes.*

A Sheriff shall have an Action of Trover for Goods levy'd by him in Execution, and taken from him, for he hath a special Property sufficient to maintain this Action. *Levinz 1 Part 282. Wilbraham against Snow.*

For what Things it lies.

1. It lies for Money, tho' it is not in a Bag, for the Plaintiff shall only recover Damages; for the Money lost cannot be known, yet the Losing is but a Surmise and not Material, and a Taking may be before Witnesses. *Rolls Abr.*

2. For 40^l. of Money told him in a Box, without saying it was seal'd or lock'd. *Ib.*

3. For

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3. For a Bond. *Ib.*

4. For an Hawk; but it ought to be alleged, that it is reclaim'd; for otherwise it seems that if it be lost, and form'd a Verdict that he was possesst of it as of his proper Goods, does not aid him, for by losing the Property is gone.

5. For a Spaniel chain'd, for it is reclaim'd.

6. For Negroes being Infidels, and Merchandize. *Levinz 2 Part. Butts against Penny.*

Writ in Trover.

The Place of *Conversion* ought to be shew'd in the Writ; but in this Case the Possession is supposed to be at A. and the Loss *Trover* and *Conversion* being all conjoined with a Copulative, shall be intended all at one Place, viz. at A. *Crook 3. 525. White against Hanby, upon a Writ of Error.*

Declaration in Trover.

If the Declaration be, that the *Baron* and *Feme* did convert to their own Use, it is not good, otherwise it is if it be to the Use of the *Baron* or a *Stranger*; for the Conversion is the Point of the Action, which is a *Tort*, (*i. e.*) a Wrong, with which the *Feme-Coverd* may well be charged.

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A Declaration for Four Curtains and Vallens is good, for it shall be intended so much as is used about a Bed. *Syd. 2. 174. Feeke and Ward.*

A Declaration for Ten Pair of Curtains and Vallens, is good. *Syd. 1. 445. Taylor against Wells.*

A Declaration for several particular Goods, & *aliis Utenfiliis* (*Anglice*, Implements) after Verdict and intire Damages. Judgment was stay'd for the uncertainty of *aliis Utenfiliis*. *Levinz 3 Part 18. Blackhouse against Moore.*

A Declaration for *sex Catulis, quatuor Catellis & unâ amphorâ Saporis*. After a Verdict for the Plaintiff, and intire Damages, the Court rul'd Judgment for him, for they would intend Dogs; Whelps; and as for the Word *Sapores*, they would intend the Damages to be given for the *Amphora*, and nothing for the Word *Saphores*. *Levinz 3 Part 336. Chambers against Warehouse.*

A Declaration for *Tribus Struibus Fami* (*Angl.* Ricks of Hay); after Verdict it was mov'd, that *Struibus* is uncertain, it ought to be *Carectatis*, but the Court, 'twas certain enough, and gave Judgment for the Plaintiff. *Levinz 1 Part 301. West against Davies.*

A Declaration for *quadam Parcela Fili*, a Parcel of Thread, is certain enough, because Damages only are to be recover'd, and not the Thing it self, as in *Replevin*. *Levinz 1 Part 303. Fenny against Norris.*

Plea

Plea in Trover.

In *Trover*, and all other Actions where the Plaintiff makes Title to the Thing demanded, or to the Thing for which he demands Damages, there the Defendant ought to make a better Title to himself, and to traverse the Title of the Plaintiff, or otherwise to confess and avoid it. But in an Action of Trespass, *Quare Vi & Armis*, Colour of Possession given by the Defendant to the Plaintiff sufficeth, because the Declaration is General upon a Supposal, without any Title put in certain, and therefore it sufficeth to answer a Supposal with a Colour of Possession only. *Telverton* 174. *Priestly* against *White*.

This Action doth suppose a Wrong which the Defendant ought to answer, and therefore he must plead Not Guilty to the Misdemeanour, and give the other Matters in Evidence. *Modern Reports* 136. *Manby* against *Scot*.

Sut

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Sur Assumpsit, (i. e.) upon a Promise.

Wager de Ley.

IN an Action of the Case upon an *Assumpsit*, the Defendant cannot Wage his Law, because it is a Trespass upon the Case. *Coke upon Littleton 295. Coke's Reports, Lib. 4. Slade's Case.*

Apportionment of an Assumpsit.

An intire *Assumpsit* cannot be apportion'd by the Law. *Sydersin 1. 38. Best and Jolly.*

A Contract or Assumpsit intire.

If Four be sued in an *Assumpsit*, and they plead *Non assump. infra sex Annos*, but not the rest, the Plaintiff cannot have Judgment, because the Contract is intire. *Ventris 2 Part 151. Bland against Haselrig & alios.*

A Promise as to one Point being void, cannot stand good for the other, for it is an intire Agreement, and the Action is brought for both Sums, and could not be otherwise without Variance from the Promise. *Ventris 2 Part 223. The Lord Lexington against Clarke and his Wife.*

The

The Manner of the Words of a Contract, or Assumpsit.

AS to the Manner of the Words of a Contract or Promise: That it matters not in what Form of Words the Assumpsit is made, so the Sense be certain and clear. And therefore, if one promise me Twenty Pounds to do a Work, or when I have done a Work, or if I do a Work, or so as I do a Work; all these are good Assumpsits. So if one promise me Twenty Pounds to marry his Daughter, or if I marry his Daughter, or with the Marriage of his Daughter: These are good Contracts and Assumpsits. So if one shall say to me, If you will satisfy me, I will do such a Work. *Plow 5. 305.* Nor is the Party that is to sue upon a Contract to declare in the very Words of a Contract, but to take up the Substance and Sense thereof, and the same to put into a formal Way of Pleading.

Persons contracting.

1. That the Persons contracting, must be Persons able to make such a Contract, and not disabled by Law to make it; as Infants, Women that have Husbands, and the like; and yet generally Promises made to them are good.

A Traitor, or Felon, may at any Time after his Offence, and before his Conviction, sell any of his Goods to maintain himself; and as to this, have his Action as another Man may have; and so happily he may be charged by this Action as another Man. *Cook* 8. 95. 171.

3. An Idiot, made so of God, till he be seized or committed by the King after his Title is found by Office, may (as it seems) sue and be sued in this Action upon any such Contract or *Assumpsit*, by a Guardian, Attorney, or some other Way. See *Cook* 4. 125.

4. A Contract to another may be of Advantage to me. *Healey's Rep.* 176.

The *Assumpsit* of a Woman that hath a Husband, regularly doth not bind the Husband; yet a Promise made to such a Woman is good, as a Promise made to a Man is good, so as there be a good Consideration in it. *Hutton's Rep.* 105.

The Husband and Wife may join in a Suit upon an *Assumpsit* to the Wife, *Utm sola suit.* *Hill* 9. *Jac. B. R.* *Wolverton* and *Day.* *Crook* 2. 64.

If one promise to a *Feme-Couvert*, That if she will procure her Husband to levy a Fine of such Land, he will give her a *Riching Suit*: In this Case, for Breach of Promise, they must join in the Action. So if a Promise be made to the Husband, to pay a Legacy given to his Wife. *Adjdg.* *Stiles Rep.* 297. *Cottrell* and *Theobalds*, B. R.

If one promise to give my Wife Twenty Pounds, we must both join in an Action for the Recovery of this Money. *Bulstrode* 1. 122.

A Promise, if good, made to the Wife, is all one as if it were made to the Husband; and therefore, if one say to my Wife, That if I will let out *A.* who is in Prison on an Execution for my Debt, that if *A.* pay it not to me such a Day, he will pay it, I alone may sue him for this. 27 *H.* 8. 24.

The Husband alone may sue upon an *Assumpsit* made to the Wife, and declare as upon an *Assumpsit* made to himself, or they may sue together. *Crook* 1. last publish'd, 61. 27 *H.* 8. 24, 25. *Noy* 19. The *Assumpsit* of the Wife for necessary Apparel, will not bind the Husband. *Hutton's Rep.* 105.

The Husband is in many Cases chargeable in this Action upon a Contract made with his Wife; and so he may be charged upon the Contract for a Thing bought and sold, or any Incident to it, as upon his own Contract. And therefore if she sell her Husband's Goods, by Authority precedent from him, or by his Consent subsequent, or where he doth not disagree to it during his Life; in the two first Cases clearly the Contract is good. 27 *H.* 8. 25. So if the Wife buy any Thing by Authority, General or Special, from the Husband, or without Authority; if it be for her necessary Apparel, the Husband will be chargeable herewith. *Dyer* 234. *Hutton's Rep.* 105. So where

the Wife doth buy and sell, and manage the Estate of the Husband without him, or the Things sold be such as are proper to a Wife to sell, as Eggs, Butter, Cheese, &c. there her Contracts will bind him. But if she buy any Thing for her Husband, or to his Use, without Authority General or Special from him, this Contract will not bind him, albeis the Thing bought be spent in his House: And yet if he agree after the Buying, it will bind him. And in such Contracts made by the Wife, the Husband may declare as upon a Contract made to himself; and this Action will lie, as it will upon Contracts made with himself. But Collateral Promises, as Warranty, and the like, to such Contracts, annexed, will not bind the Husband without his special Agreement. 21 H. 7. 40. 20 H. 6. 22. Old. N. B. 62. 27 H. 8. 25.

An Infant under 21 Years old, tho' but a Day, will not be bound by any Contract or *Assumpsit* of his; tho' it be made never so much in his own Advantage; and therefore this Action will not lie against him upon any such Contract or *Assumpsit*. And yet his Contract for necessary Meat, Drink and Apparel, Physick, Schooling, and the like Necessaries, is as good and binding as another Man's Contract is; and so he is chargeable himself, and his Executor after him. *Noy's Rep.* 87. *Popham* 151. To a Taylor for making Cloaths for him. *Noy's Rep.* 85. To a Brewer, for Beer for him. *Noy's Rep.*

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Rep. 85. And the Judges, not a Jury, are to judge what shall be said necessary. *Bromley*, P. 168. *Crook* 2. 494. 560. *Leonard's Rep.* 114. *Bulst.* 1. Part 38. *Cook* 9. 87. *Plow.* 364. 10 *H.* 6. 14. *Cook upon Lit.* 172. 18 *Ed.* 4. 2. *Hob. Rep.* 96. And yet if after this the Seller and he come to an Account, and bring what he had of him to a Certainty, he may not sue upon this Account stated. *Trin.* 24 *Car. B. R.* *Stile's Regist.* 184.

And some say, if he buy a Horse, and he give Earnest, and the Seller break with him, he may have this Action against the Seller, but shall recover small Damage, for the Seller could not have recover'd the Money agreed upon between them, if he had deliver'd his Horse; and the Infant may bring an Action of Account for his Earnest-Money again. It is not safe therefore to make any Contract with an Infant; for some say, if he sell a Horse or Goods, and deliver it with his own Hands, that this Contract is not void, but voidable only. 26 *H.* 8. 2. 21 *H.* 7. 39. 18 *Ed.* 4. 2. If he buy Wares in a way of Trade, and get by it, yet this will not bind him. *Crook* 2. 494.

The Master in many Cases chargeable in this Action upon the Contract of his Servant. And for this, we are to know, that the Contract of a Servant in Buying and Selling will bind the Master, and make him chargeable for the Things bought in these Cases.

1. Where the Servant is known, and a common Bailiff to his Master, and he doth use to buy for him, and he doth mention his Master in the Bargain, and doth buy for him.

2. Where the Master doth give a precedent Authority to him so to do, and he doth mention his Master's Name in the Bargain, and buy for him, albeit the Master never have the Thing bought: And in these Cases the Contract is good, albeit the Master have no notice of it, and any Friend may be a Servant in the last Cases. For if any Servant of mine by my Appointment buy any Goods for me, or to my Use; by this the Property of them is in me, and this shall be said my Buying, and I must have them. *Trin. 9 Jac. B. R. Moore's Case.*

3. Where the Thing bought doth come to the Master's Use, and he doth assent to it: But if it do come to the Master's Use, and he doth not agree to it, *Contra*, especially if the Things be unnecessary.

4. Where he doth after the Buying agree to it, tho' it come not to his Use; for a subsequent Agreement is equivalent to the preceding Authority, and the Seller may have an Action of Debt, or this Action as the Case is against the Master. And if the Servant do make any special Promise to pay the Money, he may have an Action of the Case against the Servant. *Fitz. 20, 27. Ass. 5. Plow. 1 r. F. N. B. 62. Doct. & Stud. 137. Dyer 230, 237. F. N. B.*

120. G. 11. H. 6, 20, 21. H. 7, 40. And some think these Contracts to be good, altho' he never use his Master's Name in them. But in other Cases, the Contract is void as to the Master, and will not bind him.

If my Servant by my command sell my Horse, the Money is to be paid to me. *Hesley 176.* So in selling of the Master's Goods or Cattle, the Contract of the Servant will bind the Master, in these Cases:

1. Where the Servant hath a precedent Authority, General or Special, from the Master to sell the Thing: And here it will bind, albeit the Master hath not Notice of it, and receive not the Money of the Servant. But if his Servant give away his Goods, *contra.*

2. Where the Master, after Notice of the Sale, doth agree to it.

3. Where the Servant is a common and known Bailiff, and doth use to buy and sell for his Master. And if such a Servant shall sell or pledge his Master's Horse, or exchange his Ox for Wheat that cometh to his Master's Use; this is good, and the Parry that hath contracted with him need not to averr, that he had Authority from his Master. And in all these, and in such-like Cases, the Master may suppose the Contract to be made with himself, and sue in his own Name for the Money. *Qui per alterum facit per seipsum facit.* *Dyer 230.*

Nay's Rep. 110. Finche's Law 66. Brobke's Contract 24.

If therefore I send my Servant to a Market or Fair to buy any Thing for me, and do not tell him of whom he shall buy it; in this Case, of whomsoever he buys it, I shall be chargeable. But if I bid him buy it of one Man, and he buys it of another, I shall not be chargeable for this. *Doff. and Strat 137.* So, if I bid another deliver to my Servant what he shall call for, and I will pay him; in this Case, I shall be chargeable for whatsoever my Servant doth fetch. *Crook 8. 146.*

And therefore upon all these Cases, where this Action of the Case will lie upon the Contract made with me, it may lie upon the Contract made with my Servant for me, or to my Use.

But for any Thing collateral to the Bargain, my Servant's Contract shall not bind me. And therefore where he hath Authority to sell my Goods, and he doth sell them, and warrant the Goods, the Sale will bind me; but the Warranty will not bind me. *11 Ed. 4. 7.*

So if a Taverner's or Mercer's Servant, or a Packer, Bailiff or Shepherd, that hath the Custody of his Master's Goods, shall give them away; this will not bind the Master, but he may sue him that shall meddle with the Goods for them. *Noy 110. Braok Done 56.*

If a Servant make a Bill, testifying that he bought Wax to the Use of his Master, and this without Sale, and by this he doth bind himself to pay the Debt, will lie against the
 Servant,

Servant, for it is his *Assumpsit*; but his Master's Debt. *Dyer 230.*

But Contracts made by or with a Stranger for me, or to my Use, it is said, shall not bind me as in the Cases before. And therefore, if there be Mother, Son and Daughter, and the Mother having a Jointure on her Son's Land, the Son, in Consideration that his Mother doth surrender, doth assume with her to pay the Daughter a Hundred Pounds at a Day: In this Case, the Daughter cannot bring this Action against the Son for this Money at Law. But happily in a Court of Equity she may recover it. *Trin. 18 Jac. B. R. adjudg'd.* And yet it is laid down as a Rule, That any one, to whose Use or for whose Benefit a Contract is made, may have an Action upon the Breach of the Promise, altho' the Promise were not made to him, but to another. *Pasch. 23 Car. 1. B. R. Stile's Register 31.*

If one, in Consideration that I have paid Ten Pounds, assume to a Stranger to assure me an Acre of Land; no Action will lie for me upon this Promise at Common Law: But in the Court of Equity I may perhaps have Relief for it. *Pasch. 9 Jac. B. R. Folley's Case, by Three Judges.* And yet if I sue out a *Latine* against one that owes me Money, and use *J. S.* to follow it, and he gets a Warrant to the Sheriff to arrest him; and thereupon the Party promises him, if he will forbear it, he will appear at the Day of the Writ, or pay me my Money;

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Money; he cannot sue him upon this, but haply I may, but I must lay the Promise as it laid to him. *Crook 1. last Publish'd, 389.*

If *A.* be indebted to *B.* and a Stranger follows the Suit for *B.* and *A.* comes to the Stranger, and says to him, Forbear your Suit, and I will pay your Master; the Master may have an Action upon this, and he must bring the Action. *Hutley's Rep. 176.*

If I agree with another, that *J. S.* my Son and Heir shall marry *Constance* his Kinswoman. And in Consideration of that, I agree to assure *Constance* Land, Ten Pounds a Year, for her Jointure, he assumes to me to give my Son in Marriage with the said *Constance* Two Hundred Pounds. This is good, and it seems the Son, and not the Father, is to bring the Action if there be Cause. *Crook 1. last Publish'd, 620. Hutley's Rep. 176.*

If there be Debate between me and my Son, and *J. S.* and he hath beaten me, &c. and assaulted my Son, and I have sworn the Peace, and am prosecuting him before Justices of the Peace, and the Father of *J. S.* in Consideration that I and my Son will desist our Complaint, and that his Son be no further vexed for that Cause by us assum'd, that his Son shall keep the Peace towards me and *W. R.* my Son, and I do desist, &c. And the said *J. S.* doth break the Peace upon my Son, &c. and wound him, and I am at Charge to cure him. In this Case, the Action will not lie on this

this Promise for me, as it seems, albeit I was at Charge to cure him; but for my Son it will lie, and against the Father of J. S. upon his Promise for his Son. And if in this Case a meer Stranger had made this Promise upon this Consideration, in the Behalf of the Son of J. S. it had been good. *Cree. 1. Last Publish'd, 849, 881.*

Where a Promise is to perform to one that hath an Interest in the Cause; in this Case, he to whom the Promise is to be perform'd, and not he to whom it is made, shall have the Action. If Two Joint-Tenants be of a House, and the one conditions with the other to go to Market to sell it, who doth it, and appoints the Payment to be made to another; here he to whom the Payment is to be made shall have the Action. So if my Servant by my Command sell my Horse, I am to have the Money and the Action for it, and not my Servant, for the Interest is in me. *Hutley's Rep. 176.*

But in Case where he to him whom the Promise is made hath no Interest, there he to whom it is made, and not he to whom it is perform'd, shall have the Action. As if A. promise B. to pay J. S. Ten Pounds upon a Consideration not perform'd, B. and not J. S. shall have the Action.

If one follow a Suit for me against J. S. and when he is to be arrested, to be forborn, he doth promise J. S. to appear at the Day, or pay the Debt; in this Case, I my self must sue on

on this Promise, and in my own Name, as upon a Promise made to me; and so declare; and not upon a Promise made to J. S. Crook. *1st. Last Publish'd, 1369.*

A Contract made with a Man when he is drunk, is as good as if it were made with him when he is sober. And an *Assumpsit* or Promise made by or to him in his Drunkenness, is as good as if it were made by or to him when he is sober; and so he may sue, and be sued thereupon, as another Man may be.

If an *Assumpsit* be made by Two or more at one time, they must be sued together, and one of them cannot be sued without the other. And yet after the Death of any of them, the Survivor or Survivors may be sued. *Bulst. 1 Part 116.*

If an *Assumpsit* be made to Two Men; as where Two Mens Cattle be distrain'd, and upon their Payment of Ten Pounds to him, he doth promise to procure the Cattle to be re-deliver'd to them; in this Case they must join, and may not sever in Action. And so generally where an *Assumpsit* is made to Two or more, no one of them may sue while the rest live, but they must sue all together. But after the Death of one of them, the Survivor or Survivors alone may sue. *Stile's Rep. 156, 157, 203. Cook upon Lit. 297. Brownl. 2d Part 99. Noy's Rep. 135.*

And

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And in 20 *Jac. Croo.* 2. 663. in the *Exchequer-Chamber*, it was agreed by all the Judges, and adjudged, That there is no Difference between a Collateral Promise made, and broken by the Testator in his Life-time, as where it is to deliver up such a Bond (as the Case was there) or the like, and a Promise made by him to pay Money for a Marriage-Portion, or the like, for the Executor shall be charged in both Cases alike. *Croo.* 2. 294, 571, 662. *Jenk. Century* 6. Case 81. *Cent.* 8. 80. *Hob.* 236. *Stile's Rep.* 158.

And yet it is said, that this Action will not lie against the Executor, or Administrator of a Lessor that doth covenant to pay Quit-Rents during the Term. *M.* 2 *Jac. per Curiam* in *Herlakenden's Case.* *Telverton's Rep.* 89. *Coo.* 9, 87. *Croo.* 2, 570.

But the Law is now, that regularly the Executor or Administrator shall be charged with all the Contracts made by the Testator in this Action. *Coo.* 9. 86. *Plow* 82. As if a Man promise to pay Money, or to pay that which is the Nature of a Debt, or where the Ground of the Promise is a true Debt, and he die before it be perform'd, the Executor or Administrator shall be charged with it. *Hob. Rep. Pl.* 278. *Coo.* 9, 68. *Plow* 182. But otherwise it is where the *Assumpsit* is to do some Collateral Thing, as to build a House, or the like. Or when it is to pay Money in Consideration of some Collateral Thing, as in Consideration of the

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the Enlargement of a Man out of Prison, or the like. And upon this Difference, it is said it hath been oft adjudged. *Trin. 3 Jac. B. R.* Yet see *Coo. 10. 77.* It was given by a general Rule, That by the *Assumpsit* of the Testator to pay a Debt, or perform a Duty, an Action of the Case lieth against the Executors. *New B. of Entries. f. 1, 2. Plow 181. Croo. 1. last Publish'd, 59, 91. Croo. 1. 216, 370.* And yet see *Croo. 1. last Publish'd, 454. 47, 38 Eliz. in the Exchequer-Chamber upon a Writ of Error, between Stubbins and Rotheram*, it was adjudged, That where the Testator promis'd in Consideration of a Marriage to pay One Hundred Pounds, that this is not recoverable of an Executor or Administrator: And there said, That the like Judgment was given between *Griggs and Helhouse*, in an Action brought against an Administrator, upon a Promise of the Incestant to pay Money, &c. *Croo. 1. last Publish'd, 455. Croo. 2. 571.* But the Judgments of latter Times are otherwise. And in *Pasche 18 Jac. B. R. A.* in Consideration that *B.* would marry her, assumed to leave her worth Five Hundred Pounds, and died. And in the *Exchequer Chamber* it was adjudged upon a *Writ of Error*, that the Executor is chargeable. *Croo. 2. 511.* If the Testator, being an Infant, buy Wares, and after gives Bond for it, and die, and his Executor without any other Consideration doth assume to pay it, no Action will lie for this: *Adjudged. Owen's Rep. 94.* Nor will it

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it lie upon a general *Indebitatus* with the Testator, or Intestate. *March 9. Owen's Rep. 94.* See *Popham 189. Stile's Rep. 463. Sect. 3. of this Chapter. Part 2.*

Wager.

There was a Wager laid between A. and B. concerning the Quantity of Yards of Velvet in a Cloak, and each of them deliver'd into the Hands of C. Ten Angels, and each of them agreed, That if there were Ten Yards of Velvet in the Cloak, that then they should be deliver'd to B. and if not, to A. This is good, and may be pursued accordingly. *Crook. 1. last Publish'd, 870.*

Contract or Assumpsit, Perfect or Imperfect.

Every Agreement, including any Thing to ground this Action upon, must be perfect and consummate. For if there be only a Treaty or Communication begun, and not perfected, no Action will lie upon it. And therefore, if one should agree with me to give me so much for my Horse, as J. S. shall judge him to be worth; this Contract is not complet, nor can any Action be grounded upon it, till J. S. have given his Judgment. And for this, the Law will allow reasonable Time: And if J. S. die

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die before he give his Judgment, the Contract is determin'd. *Plow. 6. 14. H. 8. 19.* But it seems the Horse must be deliver'd, or Money paid, before the Property alter, or Action lie for the Money. See more, *Coo. 10, 76, 102, Dyer 356. 17 Ed. 4. 4. 9 H. 7. 21. 10 H. 7. 6. Coo. 5, 83. Plow 302, 479. Dyer 98.*

If the Contract be to pay Part of the Money presently, and the rest at a Day to come, and the Seller give him Time to that Day to refuse: In this Case, the Bargain is not perfect till the Day; and yet if he agree to it before the Day, this may perfect it, and Reciprocal Actions will lie for the Things and Money. *Dyer 99.*

If I prize Wares, and the Tradesmen say so much; now the Bargain is not perfect till the Money be paid, unless a Day be agreed upon for the Payment of the Money. *17 Ed. 4. 1.*

If one promise me Three Shillings a Week for his Diet and Lodging, and I find him Diet, but do not find him Lodging, this Contract is perfect: But no Action can be brought for the Three Shillings a Week upon this Contract. But an Action will lie for the Diet upon the Contract in Law. *9 Ed. 4. 1.*

If I be an Artist, and one promise me Ten Pounds to teach him my Art seven Years, this Contract is in the Making of it perfect enough. But if I die before the Seven Years ended, the Money is lost on my Side. And if the other pay

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pays me the Ten Pounds, or secures it by Bond, then it is lost on his Side. 21 *Ed.* 2. 11.

If one promises to serve me a Year for Ten Pounds, this Agreement is compleat; but if before the Year expir'd he doth depart out of my Service, or die, or we part by our Agreement, the whole Debt is lost. But it is said, if the Money were to be paid Quarterly, and he serves a Quarter, that he shall have the Quarters Wages. 10 *Ed.* 4. 18. 10 *H.* 6.

25.

If I sell a Thing to another, and no Price is agreed upon, and he takes the Thing into his Hands, the Contract it seems is good. And if it be Wine, or any such-like Thing, the certain Price whereof is known and set by Law, that the Seller may sue for that Money in certain. But that in other Cases the Plaintiff must suppose, in his Suit for his Money, that the buyer promis'd to pay as much as the Thing was worth: And he must averr it to be worth so much in certain. *Trin.* 3 *Jac.* B. R.

If I offer Money for a Thing in a Market or Fair, and the Sellers agrees to take my Offer, and whilst I am telling the Money as fast as I can, he doth sell the Thing to another, and where upon such an Offer and Agreement, That he shall keep the Thing till I can go home to my House to fetch the Money: In both these Cases, especially in the first Case, the Bargains are perfect, so as the Seller may not sell the Thing to another, and upon the Payment or

G

Tender

Tender of the Money by me, and his Refusal thereof, I may take the Thing bought; or if he refuseth to let me have it, I may sue for it. *Dyer* 29, 30. 14 *H.* 8. 19. 9 *H.* 7. 21. 21 *H.* 7. 6. 10 *H.* 7. 9. *Plow.* 432.

If the Husband sells the Trees from off his Wife's Land for Money, and the Buyer doth cut and carry away part of them, and the Wife dies before he cuts the rest: By this the Contract is not gone for that which is past, but the rest of the Money must be paid; but it is gone for the Trees, for the Buyer may cut no more Trees: And yet if the Contract were to cut them at such a Day, and not before, and he cuts some of them before the Day, in this Case the Contract will be void, and he cannot be forc'd to pay any of the Money. 18 *Ed.* 4. 6. *Broo. Contract* 26.

If one sells me a Lease of Years and Goods, by one Contract, for an entire Sum of Money, and the Goods be taken away from me by the right Owner before the Money be paid, yet the Contract is good, and I must pay all the Money. So if I sell Two Horses for Ten Pounds, and one of them is another Man's, who takes him away; yet the Contract is good, and he will recover the Ten Pounds: But he will have his Action of the Case against me for selling of another Man's Goods. 7 *H.* 7. 4. *Coo.* 3. 22. 18 *Ed.* 4. 6. 9 *Ed.* 4. 1. 12 *H.* 8. 13.

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If *A.* owes *B.* One Hundred Pounds, and *C.* being a Clothworker to *A.* having Clothes of his in his House, and they Three agree that *B.* shall have these Clothes for his Money, and that *C.* shall deliver them; this is perfect; *Adjudged.* So if one possessed of a Field of Corn, agreeth with another, that he shall have all the Corn there for Twenty Pounds to be paid him at *Michalemas* next; this is certain enough. *Co.* 492.

Assumpsit void, Nudum Pactum.

If one buys of me a Horse, or other Thing for Money, and no Money is paid, nor Earnest given, nor Day set for the Payment of it, nor the Thing is deliver'd; in this Case no Action will lie for the Money, nor for the Thing sold, but I may sell it to another if I will. *Plow.* 309, 302. *11 H.* 4. 33. So if one promises to give or do for another somewhat for that which is past; or because he hath builded a House, or because he let his Friend have Wares, or because his Friend doth owe to the Party Money, and that if he pays him not, that he that makes the Promise will pay him; all these are void Promises, and will raise no Action. *Doct. & Stud.* 105.

If I promise to one, that in Consideration he hath deliver'd to me Twenty Crowns, that I will deliver them to him again; no Action will lie for this. But if he delivers them to me

first, and thereupon I promise to re-deliver them; an Action may lie for this. *Adjudged.*

If I promise to one, without any Cause, to give him Twenty Pounds to make a new House, or towards his Losses by Fire, or the like; no Action will lie for this. *Plow. 308. 17 Ed. 4. 4.*

If J. S. owes me Ten Pounds, and another comes to me, and tells me, he will be my Paymaster for the Ten Pounds, and prays me to take him for my Debtor, but gives me nothing for it; this also is *Nundum Pactum, ex quo non oritur Actio.* *Fitz. Debt. 126.*

If one promises to build me a House, make me an Estate, or to do any such-like Thing, and there is nothing given or promised by me for the doing of it, no Action will lie upon this. And where one doth promise me to do a Work by a Day, and it is not agreed what he shall have for the doing of it, or when; or if it be agreed, no part of the Money is paid: In this Case I may not sue for the Work not done, nor can he sue for the Money; but if the Promises be mutual for the Work, and the Recompence, we have mutual Actions the one of us against the other. *Dyer 21, 21. Plow. 25. 3 H. 6. 36.*

A Promise against a Promise, or reciprocal Promises or mutual Assumpsits.

One Promise may be a good Consideration of another Promise. As where I am indebted to another Twenty Pounds by Bill, and he assume to me to deliver me up my Bill, and I assume to him to procure Two sufficient Sureties to be bound for the Twenty Pounds. And in this Case, he that sues for not bringing Men to be bound, need not shew that he deliver'd up the Bill, &c. *Croo. 1. last Publish'd, 543.*

A Promise may be a Consideration of another Promise, for one Promise made in Consideration of another Promise made at the same time, and each Party may sue at any time upon the Promise made to him: But if they be made at several Times, they are both void. *Hob. Rep. pl. 16, 116. M. 2. Jac. C. B. Some's Case. Brownl. 1 Part 10. And Mich. 4 Jac. B. R. Cadell's Case.*

So if one owes me Twenty Pounds on a Bill, and I promise him to deliver him the Bill, and he promises to give Bond with Two Sureties to pay the Money by a Day, 38 & 39 *Eliz. Gower's Case.*

If one be indebted to me Twenty Pounds by Bill, and in Consideration that I will faithfully promise to deliver the said Bill to him, he

doth assume to find Two sufficient Sureties to enter into Bond to me for the Payment of it; this is a good Consideration and Promise. *Nay's Rep.* 61.

If one promises me, that in Consideration I will marry her, that she will marry me; this is a good and binding Contract, and hath in it mutual *Assumpsits*, on which Actions may lie. *Stiles* 295.

If I and another talk together of his having all my Iron at such a Furnace of mine, paying Forty Shillings a Tun for it, and I assume to him he shall have it; and he assumes to me that he will have it all, and for it pays according to the Rate aforesaid; these are good mutual Promises, on which Action may be brought. *Telverton* 133. And therein no other Consideration is necessary to be alledged, or set forth to be perform'd. *Bendl.* 150.

If an Executor owes for the Testator a Debt of Two Hundred Pounds to J. S. and J. S. is content, and doth agree with him to take a Hundred Pounds, and to take it by Twenty Pounds a Year; and in Consideration of this, the said J. S. doth assume so to pay it; in this there are reciprocal Promises. *Telverton* 11.

If one be indebted to me Twenty Pounds by Bill, and I promise to deliver him the Bill, and he promises me to bring Two sufficient Sureties to give Bond for the Money by a Day; in this Case, he may sue me and I him: And here needs no Averment of the one Side to enable

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enable the Suit ; and so in all such reciprocal Promises: But if the Promise be Conditional, *Contra Adjudged. Mich. 38, 39 Eliz. B. R. Gower and Capper.*

A. sells a Cow to *B.* for Five Pounds, and assumes to deliver her to him at a certain Day; and at the same Time *B.* assumes to *A.* to pay him the Five Pounds for the said Cow at the said Day. *A.* brings an *Assumpsit* for the Five Pounds not paid, and doth not averr the Delivery of the Cow, and it is good enough. But the Writ must mention both the *Assumpsits* ; for the one of them is the Consideration of the other, and either of them may have Action against the other, the one for the Money, the other for the Cow. *Hob. Rep. 88. Jenkins, Century 7. Case 47.*

The Count, *Pasche, 14 Jac. B. R. Fuller's Case*, was this, That the Plaintiff declar'd, that *A.* was indebted to him Two and Thirty Pounds, for which he sued *A.* and that it was agreed between him and *A.* to stay the Suit, and if he paid it not before *Michaelmas*, he should give Security, &c. In this Case it was held, that he need not shew that he did surcease his Suit, for it is a reciprocal Agreement. But if *A.* in Consideration that the Plaintiff shall surcease his Suit, promises to pay it, then he must shew that he did surcease. *Pasche, 14 Jac. B. R. Fuller's Case.*

If one, in Consideration that I have promis'd to pay him such a Sum of Money such a Day and Place, promises upon Payment thereof to surrender a Lease unto me that he hath of my Land; this is a good Promise, and Action will lie upon it. But I must be sure to tender the Money, and say in my Declaration, that I have paid it, or tender'd it, and it was refus'd. But if the Promise be, That in Consideration that I have assum'd to pay such a Sum, that he hath assum'd to surrender; in this Case he is to surrender, and rest upon my Promise for the Money. *Croo. 1. last Publish'd, 889.*

If one promises to me (a Carpenter) Ten Pounds such a Day to build him a House, and I do promise him to build him a House upon this Contract, either of us may sue the other at any time before the Work done. *Dyer 21. Plow 5, 3 H. 6. 36.*

Mutual Agreement, that the one shall build a House, and the other shall pay Eight Pounds for the building, and says that he offer'd to build the House, but does not say that the other hinder'd him. It was held by *Hale*, Chief Justice, That tho' there were mutual Promises, yet they were only to perform an Agreement which was Conditional in it self; for in Agreements Executory there is a Condition Precedent, and a mutual Promise does not oblige to perform the Agreement in another manner than 'tis made, *scil.* For the one to pay the Eight Pounds if the other builds the House.

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House. But it was agreed by the whole Court, that the Averrment, That he offer'd to build, &c. does after Verdict supply the Averrment that he hinder'd him; for if he had not been hinder'd by the other, the Offering had been in vain. *Levinz 2 Part 23. Opy against Peters. Ventris 177, 214. Peters against Qpie. Ib.*

Assumpsit in Consideration that he has undertaken to do such a Thing, is a Promise against a Promise, or a mutual Promise, and there is no need of an Averrment of the Performance of the Thing undertaken. *Levinz 1 Part 20. Bennet against Astell.*

Where the Promise is mutual, and one Part is to be done upon the Performance of the other, there the Performance ought to be averr'd; as in this Case, *A.* promis'd *B.* to deliver to him a Deed, *B.* promis'd *A.* upon the Delivery to pay him 60*l.* There ought to be an Averrment of the Delivery of the Deed, but a Promise to pay him 60*l.* upon the Delivery of a Deed, and also to deliver to him the Possession of certain Land on the first of *April* next ensuing, are distinct Promises to be perform'd at several Times, and if the Breach be assign'd only for not delivering the Possession of the Land, there needs no Averrment. *Levinz 1 Part 70. Oliver against Evens.*

Upon mutual Promises there needs no Averrment of the Performance, and therefore a bad
Averrment

Averment shall not hurt. *Levinz 1 Part 293.*
Beany against Turner.

Contract or Assumpsit to retain Money, &c.

If one owes me Twenty Pounds, and I buy of him Goods to the value of Five Pounds, and it is agreed between us, he shall keep up his Five Pounds towards his Twenty Pounds; it is said, that this will not bar him of his Five Pounds if he sues for it. *Fitz. Debt. 56.*

So if one promises me, that I shall retain the Rent I owe him for Money he is to pay me; it seems this will not discharge so much, nor may I plead it in Bar to an Action for the Rent; but I may bring an Action upon the Promise, if there be any Consideration in it. *Mich. 9 Jac. B. R. Jarvis's Case.*

Assumpsit to marry.

Assumpsit in Consideration that she will marry him, he will marry her, good. *Levinz 1 P. 147. Rutter against Hebden. Vide 7 H6. 1. a. b.* Disceit brought for not marrying his Daughter according to Agreement, for the Contract is Temporal.

Assumpsit

Assumpsit Conditional.

Where I promise to make new Pales, if I may have the old Pales; I must have the old e're I am bound to make new, and I am not bound to look after the old Pales my self. 33 H. 6. 43. 27 H. 8. 44. Perk. Sect. 7. 13.

If one have Seventeen Tod of Wool by him to sell, and I bargain for Fifteen Tod of it at my Choice, and he, in Consideration of Six Pounds to be paid by me such a Day, promises to deliver it me such a Day, this is good: But if I sue upon it, I must shew that I have chosen out my Fifteen out of the Seventeen Tod; for this is a Condition Precedent: And yet if he sells any of it before my Choice made, this will make the Promise absolute, and will be a Breach of it; so if he denies me to see it, and make my Choice of it. Telverton 76.

If one promises for Ten Pounds paid him in Hand to build a House; this is Conditional, and he is not bound to do it till the Ten Pounds be paid. And it is not like to this, where one doth promise to build a House, and the other doth promise Ten Pounds; here the Promises are Reciprocal, and give Action to each of them, the one against the other.

Assumpsit to pay if another does not pay, is his own proper Debt, and not Collateral. Levinz 3 Part 363. Masters against Marriot.

Assumpsit

Assumpsit Certain or Uncertain, or Repugnant.

If one buys Twelve Weights of Barley, and assumes to pay for them as much as the Seller should have of any other, abating a Penny only in every Bushel, the Agreement is good; but if the Seller sues for his Money, he must be sure in this Action to set forth, that he hath given notice before the Action brought for what he had sold it. *Croo. 2. 432.*

Agreement to pay Money in a short time, is uncertain, and no good Agreement. *Croo. 2. 250. 683.*

If a Promise be to pay Money, and no Time set for the Payment thereof; this is certain enough, and good, and shall be paid presently.

If one promises to pay Money, or do any Thing on such a Day next coming, or about that Time, it seems it is good, it must be done near about the Time. *Noy 16.*

If I sell my Horse for Ten Pounds, to be paid in a short Time; this Bargain is void for Uncertainty: And therefore, if the other that buys doth take or leave the Horse with the Seller, it seems he may take and keep, or sell his Horse to another at any Time, till he hath receiv'd the Ten Pounds. *Bulstr. 1 Part 92. 14 H. 8. 18, 19, 20.*

If

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If J. S. and my self be talking of the buying of Two of his fat Oxen, and I promise to pay for them Seventeen Pounds in a short Time, and he doth thereupon assume to deliver them unto me; this Promise to pay *intra breve Tempus*, is uncertain, and no Consideration at all, and therefore not good to ground an Action upon it. *Croo. 2. 250.*

If one promises me for good Consideration, to pay me Ten Pounds, or give me a Gown such a Day, this Promise is certain enough and good; and if one of them be not done at the Day, this Action lieth: And before the Day, he that is to do it, hath his Choice to do which of them he will: But after the Day, he to whom it is to be done hath Election which he will take. *Fitz. Debt. 89. 9 Ed. 4. 39.*

If a Contract be between A. and B. that A. shall pay his Part of the Sums of Money that shall be levy'd for the trying of the Customs of M. So if one promises to another to save him harmless, and say not for what, or against whom; these Contracts are insensible and uncertain, and therefore void: But if any Sense or Certainty can be made of them, they shall be good, and an Action may lie upon them. *Pasch. 9 Jac. B. R. Coe. 10. 102. 76. Dyer 356.* And therefore if the Promise be to make good a House, this is certain enough, and shall be taken that he shall repair it. *Mich. 21 Jac. B. R. Key's Case.* So if one owes me Money,
and

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and another, upon some good Consideration annex'd to the Promise, doth promise to make it good to me; this is certain enough, and shall be taken in the vulgar Sense. *Mich.*

21 *Jac. B. R.*

If a Contract be between *A.* and *B.* That *A.* shall do such a Work, and *B.* shall pay so much for it, but that *A.* shall not sue for the Money; this is repugnant and void, and will not bind on either Side till the Work be done, and then perhaps he that did it may have an Action for his Wages.

If one promises to give so much for a Thing as it shall be reasonably worth; this is void for Uncertainty. *Dyer 91.*

If one for good Cause promises to pay me Money in a short Time; this is void for Uncertainty. So if one sells me a Horse for as much as I shall value him at. *Bulst. 1 Part 92. Croo. 250. 683.* So if one for good Cause promises to forbear me his Money for a little Time; this is void for Uncertainty. *Pasch. 8 Jac. B. R. Sackford's Case.*

If one promises, that if I will deliver Wares to his Daughter, that he will pay for them; it shall be intended that he will pay me for them. *Noy's Rep. 83.*

If one says to another, I pray trust *J. S.* with a Hundred Pounds, without more Words; this is no good *Assumpsit*, unless he said these Words, And I will see you paid, or some such-like Words. *Telverton 45.*

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If a Promise be to pay so much Money for Currants sold unto him, *discomptendo*, for four Months; it seems this Declaration is uncertain, and so void. *Stile's Rep.* 29. *Breer and Sothwell. Trin.* 23 *Eliz.* *Stile's Rep.* 27, 58, 63.

If one promises, in Consideration of a Marriage, to leave half his Estate to the Party; this is certain enough and good. *Stile's Rep.* 463.

If I promise to another, so he marry my Daughter, to give him as much as I shall give with any other Child; this is certain enough, and good, and if I by my Will shall after give a Hundred Pounds to another Child, he that marries my Daughter may sue my Executor for this Hundred Pound. *Glauc. Affixes*, 6 *Car. I.* *Whitlock's Case. Trin.* 17 *Jac. B. R.* *Roll's Case.* So a Promise to give a Child's Part, is certain enough, and good. *Trin.* 17 *Jac. B. R.*

If I promise to one, in Consideration that he will pay me Ten Pounds, I will make him a Lease of such Land; this it seems is little worth, but void for Uncertainty; for he may make a Lease at Will, and avoid it as soon as it is made: So if the Promise be to forbear a Suit, and say not how long. *Pasch.* 39 *Eliz.* *Co. B.* *Burkin's Case.*

If a Contract be so, that part of it is that the Contract shall be of no Use; as that one of the Parties shall bring no Action upon it, or shall have no Benefit by it: This is frivolous, and void. 7 *H.* 6. 44. 21 *H.* 7. 24. 30.

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If an Agreement be to make a Lease of Land; and it is not said when to begin or end; this is altogether uncertain, and void, for it may be a Lease at Will, which may end as soon as it doth begin. *Berkin's Case. M. 38, 39 Eliz. Co. B.*

If a Promise be to make a Lease for certain Years of Land, and say not when it shall begin, it shall begin presently. *Coo. 10. 76, 102.*

If one retains me to go a Journey, and promises me as much as will content me for it; this is a good Promise to ground an Action when I have done the Work, and shew'd him what will content me, and demand it, &c. *Croo. 1. last Publish'd, 132, 133.*

If it be agreed between me and another, that he shall have Leave to depasture Twenty Sheep from *Michaelmas* to the Second of *April* upon my Land in *Dale*, and in Consideration of this shall pay me as much for the same as it shall be worth. *Bendl. 147.*

If one promises me, that if I will procure a Licence for *B.* from one *C.* my Lessor, to sell a Term that he hath, that he will pay for my Charges as much as I shall deserve: This is a good *Assumpsit* and Consideration, tho' there be no need of a Licence; and I may have this Action upon it if I procure the Licence, for the Procurement of it, tho' vain is a Labour to me. *Judged, Affirmed in Error. Croo. 2. 618. Jenk. Century 8. Case 18. Bendl. 139.*

A promise to pay Money in *Trinity Term*, is certain enough, and good. *Leonard's Rep. pl. 295.*

If a Contract be made, upon good Consideration to do a Thing, he that promiseth to do it shall have a reasonable Time to do it, and not have Liberty to do it at any Time during his Life. *Hill 22. Car. 1. B. R.*

If it be a part of an Agreement to give a Bond with Sureties, and they say not what Sureties, nor in what Sum, the Court must set down how many Sureties, and in what Sum. *Hob. Rep. Pl. 19.*

Assumpsit, lawful or unlawful.

If A. be sued on a Bond, and I become Bail for him, and Judgment and Execution is had against one; and the Plaintiff doth promise me, so as I will pay him, he will assign me the Bond and the Debt, and make me a Letter of Attorney to sue for it in my own Name; this Promise is against Law and word, being Champerty. *Trin. 38 Eliz. B. R. Dixon's Case. Vide Stat. of Will. 3. that enables to assign.*

To beat a Man, nor good. *Levinz 2 Part 174. Allen against Rescous.*

If one tells to me all his blades of Corn in such a Ground, the same being sowed with Wheat and Rye, and now almost ripe, the Types excepted, for sixteen Pounds, to be paid such a Day Hence. *Assumpsit*

Assumpsit frivolous.

If one gives me Twelve Pence, and I in Consideration thereof promise him, that if I do not cause him to be whip'd to Morrow about the Cross in Gloucester, I will give him Five Pounds, and he is not whip'd; no Action will lie for this Five Pounds upon this frivolous Promise. *Hetley Rep. 4.*

*Assumpsit impossible, no Action lies.**Assumpsit pursued or perform'd, or not.*

If one promises me, that if I will seal a Release to J. S. he will pay me Five Pounds; this is good. But if I averr, that I, by the appointment of him deliver'd the Release to B. to the Use of J. S. This is not well pursued and perform'd: But otherwise if it had been by the Appointment of J. S. himself. *Noy's Rep. 18. 8 H. 7. 13. 2.*

Assumpsit executed, or Executory.

If one sells to me all his Blades of Corn on such a Ground, the same being sowed with Wheat and Rye, and now almost ripe, the Tythes excepted, for Sixteen Pounds, to be paid at such a Day to come; this is a good Bargain,

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Bargain, and if I take the Corn (as I may), he may either have an Action of Debt, or this special Action of the Case at his Choice against me for the Money. *Coo. 4. Slade's Case 92.*

Assumpsit of Two or more Parts, how to be taken.

If one be indebted to me a Brewer, for Beer, and die; and his Administrator, in Consideration that I will deliver to him Six Barrels of Beer, assume to pay me that the Intestate did owe me, and this also, and I do so; I may have this Action for both, and have one Judgment and Execution, *de Bonis propriis. Croo. 1. last Publish'd, 406.*

Assumpsit to a Feme-Covert.

If J. S. promises my Wife during Coverture, in Consideration that she will cure such a Wound, that he will pay her Ten Pounds; this is good, and Actionable, and I and my Wife may sue together for it. *Croo. 2. 205.*

A good Assumpsit.

If I, being a Solicitor retain'd for J. S. do retain an Attorney for him to sue, and I do assume to pay him his Fees; in this Case he may have this Action or Debt against me for his

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Fees at his Choice: *Adjudged. Hill. 16 Jac. Bradford's Case. 17 Ed. 4. 5. 33 H. 6. 8.* But if I retain an Attorney for J. S. and say no more; in this Case, it seems he can have neither of these Actions against me: And yet if I say to him, *Be Attorney for J. S. and if he pays you not, I will;* in this Case he may have this Action. And if I say, *Be his Attorney, and I will pay;* by this I am chargeable in both these Actions. *43 Eliz. Simpson's Case. Bullstr. 1 Part 16.*

If one have a Dog of mine, and assume to deliver him to me on Request, and do not, I may have this Action; for a Dog is not *fera Naturæ.* *Owen's Rep. 95.*

Assumpsit to save harmless.

If A be Bail for B. in B. R. and B. promises to save him harmless, no Action will lie for this by A. against B. altho' he pays the Money, if no *Capias* be awarded against the Principal; nor *Scire Facias* against the Bail. *Tzin. 7 Jac. B. R. Rolles and Jones Error upon a Judgment in Co. B.*

If one promises to save another harmless from any Thing, he that made the Promise ought to do it at his Peril without Request, and Request is not material, altho' the Promise say, upon Request: And if he be damnified by me, and I do recompence him upon Request made, the Promise is not broken. *Stiles 141.*

Assumpsit

Assumpsit that the Lessee shall enjoy the Land.

If the Promise be, that he shall enjoy the Land and no more, this shall be taken as against himself, and all claiming by or under him only, and not of Strangers. *Bulstr. 2 Part, 94. 95. 26 H. 8. 3. Dyer 328. 18 Ed. 4. 20.*

Assumpsit to do a Thing upon Demand.

If I promise upon good Consideration to pay Ten Pounds on Demand, or say not when it shall be paid; in this Case, it seems no Demand is needful: But if the Promise be to do a collateral Thing, as to pay Ten Pounds owing by another Man, if he pays not himself at Michaelmas upon Demand; in this Case he must demand it, before he can sue for it. *12 H. 8. 12. 17 Jac. B. R.*

Assumpsit to do a Thing upon Request.

If one be arrested for my Debt, and he makes an Obligation to me, for his Delivery, to pay the Money at a Day to come, but doth not deliver it as his Deed, upon *Assumpsit* that he will deliver upon Request; in this Case I must request it; and if I make no Request till the Day of Payment be past, I am Remediless

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in Law, and must sue in Equity for my Money. *Pasche, 9 Jac. B. R. Basset's Case.*

Where a Time certain is limited for the Payment of any Thing, he shall never alledge a Request before the Day; but otherwise it is where it is incertain. *Croo. 1. last Publish'd, 455.*

If one, for good Cause, promises to pay me Nine Pounds, which *J. S.* doth owe me, when the Party promising shall be thereunto requir'd; in this Case, because it is a Stranger's Debt, and no Duty till the Promise, there must be a special and exprefs Request made, and the Time and Place of it set down, and *dicet sapius Requisite*, will not serve. *Croo. 2. 523.*

If Three assume to pay, or give, upon Request; if the Request be made to one of them, it is good enough. *Noy's Rep. 135.*

If I sell my Horse for Ten Pounds, and no Day of Payment in the Suit for it, it must be laid to be paid, *cum inde requisit esset.* *Brownl. and Goldsb. 12, 13.*

The Collateral Matters which are not Duties, a Request is material, and are not like a Duty; as for a Debt which is due, and no Day of Payment exprest, there it shall be alledged to be, when he shall be thereunto requested generally. *Brownl. and Gouldb. 13, 14.*

If one promises me, that if I take such a Woman to Wife, he will pay me Twenty Pounds, when he shall be thereto requested
after

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after the Marriage; in this Case, there needs no special Request to be, or be pleaded. *Hutton's Rep. 2.*

Assumpsit to pay upon Request, upon *non Assumpsit* the Plaintiff need not prove the Request, because it was traversable, and not being traversed it was admitted. *Levinz 1. 166. Anonymus.*

Notice where it must be given.

If I promise Money to the Marriage of my Daughter or Kinswoman: In this Case, it seems no Notice needs to be given to me of the Marriage before the Suit brought; and yet if it be Penal, it is otherwise. And therefore where the Contract is, That if you marry her, and I do not then pay you Twenty Pounds in Three Weeks, I shall pay Forty Pounds; in this Case Notice must be given of the Marriage, and Demand of the Money. So if I promise a Woman, if she will marry my Son, that I Will the one half of all my Lands and Goods: In this Case, Notice must be given before a Suit can be begun. *Old Book of Entries, fol. 4. New Book of Entries, fol. 2.* So if I promise a Man Twenty Pounds upon his Day of Marriage, or when he shall marry any Woman whatsoever: In this Case, Notice must be given to me that he is marry'd, e're I can be sued: But if I promise to one a Hundred Pounds if he marry *A. S.* my Cousin; it was adjudged in this Case, Notice

was not necessary; but it shall be intended, that when he demanded the Money, he gave Notice of the Marriage. *Croo. 2. 228, 229.*

If one promises me Money at the Day of my Marriage, I need not, nor need I to shew in my Declaration, if I sue upon it, that I gave him Notice of my Marriage before I married. *Croo. 1. 23.* But if a Collateral Thing be to be done on the Marriage-Day, there perhaps Notice must be given, altho' it be to be done to the Party himself. *Bulfr. 3 Part 236.*

If I promise to another Man upon the Marriage of my Son with his Daughter, at the Marriage to give a Hundred Pounds to my Son: In this Case notice must be given, or else how can he pay the Money at the Marriage Day? *Telverton 121, 122.* And yet if one promises me a Hundred Pounds, if I will marry his Daughter, on the Day of Marriage, or within Ten Days after upon Request: In this Case no Notice is needful, for it is implied in the Request. *Bendloe 159.*

If I am promised by J. S. that if I at his Request will take S. M. to Wife, he will pay me a Hundred Pounds upon Request: In this Case, I am not bound to give him Notice of the Marriage, but may sue for my Money without it. *Telverton 168.*

If I have Ten Quarters of Corn, and I sell one Quarter to J. S. to pay me half a Year hence for it after the Rate that I sell the rest; I must tell,

sell, and give him Notice how I sell the rest, before I can sue for this. *Hob. Rep. Pl. 56.*

If a Promise be to J. S. to pay my Money at his first coming to Gloucester; Notice must be given to him that is to pay it, when the other doth first come to Gloucester. *Hob. Rep. Pl. 63.*

If one promises me to save harmless concerning any Suit about my Land, and there be a Suit and Recovery against me about it, I must give him Notice of the Suit and my Damage, and demand it ere I can sue. *Croo. 1. 254, 255. Croo. 1. last Publish'd, 97.*

If I promise, for good Cause, to pay Ten Pounds to J. S. when he shall purchase White-Acre: In this Case he must give me Notice of his Purchase ere he can sue me for this Ten Pounds; but if the Promise be to pay it when the Stranger shall purchase it, there it seems otherwise, for this is as much in his as in my Knowledge. *Coo. 7. 29. Brownl. 1. Part, 9, 10, 13, 46.*

If one promises to pay me such a Sum of Money upon my Return into England, I must shew in my Count, that I gave him express Notice, and the Time and Place of Doing it. *Croo. 1. 412.*

There needs no Notice to be given of an Award, but the Parties at their Peril are bound to take Notice of it. *Hob. Rep. Pl. 56.*

If one buys Barley of me, and assumes to pay for it, as much as I shall have of any other, abating a Penny only in every Bushel: In this Case,

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Case, I must give Notice to the Buyer what another gave, and so set forth in my Declaration: But if the Agreement be to pay so much as J. S. paid; in this Case, Notice is needful to be given. *Croo. 2. 432.*

If one assumes to me, in Consideration that I shall procure him such a Decree in *Chancery* in such a Cause there, that he will give me Ten Pounds for it: In this Case, I must give him Personal Notice of the Decree; but if he himself, to whom I should give Notice, be one of the Parties to the Suit in *Chancery*, there I need not give him Notice of it. *Telverton 121.*

If one assumes, in Consideration of divers Sums paid to him, That if *Cooper* affirm, at his Return from beyond Sea, that he receiv'd of me Twenty Pounds, that he will pay me the Twenty Pounds: In this Case, if I sue, I must shew that he did affirm it such a Day, Year, and Place: but before whom he affirm'd it, is not material, and I am not bound to give, but he is bound to take Notice thereof, the Thing being to be done by a Stranger, and lying as much in his as in my Knowledge, *Croo. 2. 492, 493.*

If one be bound by Promise to me, to pay me such Money as I shall lend to J. S. and I do after lend him a Hundred Pounds, I may bring my Action upon the Promise, without giving of Notice to him, and he at his Peril must take notice of it. *Adjudged, affirmed in Error, P. 6 Jac. Harv. ley and Leighton. B. R.*

Croo.

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Crao. 2. Car. 34. Jenkinson, Cent. 7. Case 11.

92.

In Cases where it doth rest in the equal Knowledge of the Parties what is done, there no Notice is to be given by the one Party to the other what is done; but where it is more in the Knowledge of him to whom it is to be done, there Notice is to be given: And in case where a Penalty is to be recover'd for the not doing of the Thing, there Notice must be given; but where bare Damages only is to be recover'd, there it is not needful. *Bulstr. 1. Part 12, 13.* Also there is a Difference where the Thing to be done is Executed, and where it is Executory; where Executed, no Notice is to be given; as what Cloth you shall deliver to J. S. I will see you paid for it: In this Case he must give Notice what Cloth he doth deliver.

And there is this Difference, when it rests upon a Matter to be done between the Parties themselves: There Notice is to be given of this to the Party who is to make a Payment of Money upon an Act to be done by the other, to whom the Payment is to be made: Otherwise where it is to be done by a Stranger, for there he hath taken upon himself to take the Notice at his Peril. *Bulstr. 3. 44.*

Contract

*Contract by way of Bargain and Sale,²⁹
with or without a Warranty*

This Action will lie in some Cases upon a Contract of Buying and Selling, the which is sometimes with, and sometimes without a Warranty: And this (in this Case) doth sometimes respect the Property of the Thing sold, and sometimes the Quality of it: And Warranty is the Cause of an Action in case of Vendition, as well as of Corruption. 19 H. 6. 9. So that if one sells me any living or dead Thing, and warrants it sound and right, and if it be not so, I have this Action. *Kelm. 89. 9 H. 7. 22. 7. N. B. 94. 98.* The Warranty must be made by the Man that sells, and not by a Stranger, and upon a Sale by the Owner, and not by a Servant, otherwise it is not binding. 11 Ed. 4. 6. And whether the Price be paid or not, is not material in this Case, for Debt lies for it. 9 H. 7. 21. Pl. 2. 5 H. 7. 41.

If one sells a Horse to me lame or diseased in his Legs or Eyes, and knows it, and warrants him to be sound, I may have this Action against him. *T. 7 Rich. 2. Ley. 42. 31 H. 6. 11.* So if one sells me a Horse sick, and warrants him sound, and knows it to be otherwise. *N. B. 94. C. 7 R. 2. 42. Regist. Orig. 108. Lib. Intr. 9 B. Sect. 1.* But if it be such a Fault as the Seller doth not know of, some say the Action

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Action will not lie. *F. N. B. 92.* But it seems the Law is otherwise, and alike in both Cases. But if a Man sells me a Horse, or other Thing, and warrants it to be otherwise than it may appear to him that hath his Five Senses; as a Horse to be sound, and he is strained, or hath a Splint, Spavie, Boil, or is lame; or warrants Cloths to be Red, and they be Blue: No Action will lie upon this Warranty. *13 H. 4. 20. 7 H. 4. 14. 5 H. 7. 41. 20 H. 6. 37. 31 H. 6. 11.* And yet see *Croo. 631.* where it seems to be held, that in case of a Warranty made at the Time of the Sale, an Action will lie: *Video Quare.* If he warrant him to be sound Wind and Limb, and he hath some secret Disease known to the Seller, not visible to the Buyer, as if he be Shoulder-shot, or the like, I may have this Action against him. *Adjudged.* *13 H. 4. 12. 8 Jac. B. R. 11 Ed. 4. 6. 13 H. 4. 12.* But if the Warranty extend to a Thing to come, as that a Horse shall carry a Man Thirty Miles a Day, or the like; this it seems is not binding. *Finche's Law, 188.*

If a Man sells me Cloths, and warrants every one of them to be of such a Length, and they be not so; it is said I may have this Action for this: But if the Warranty be for such a Colour to a Buyer that hath his Eyes, and they be not of that Colour, this is not Actionable. *11 Ed. 4. 6. 7. Decept. 23. 24 H. 6. 22.* Action upon, *C. 9.* And there it was said, If a Stranger shall warrant a Thing sold me, that this
is

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is void: So if my Servant that shall sell my Goods warrants it, no Action will lie against him. 11 *Ed. 4. 6.* So if one warrants Cloth sold to me, that it is well fulled, when it is raw. 11 *H. 6. 22.*

But if a Thing be sold to me that am absent from it at the Sale, and the Seller warrants it, I may have Advantage of this, albeit it be about such a Thing as I might have discover'd if I had been present. 14 *H. 6. 24.*

Action, &c. 9. If the Servant sells by Covin of the Master, and the Master agree to the Warranty, he may perhaps be chargeable with it. 9 *H. 6. 53. Pl. 37. 11 Ed. 4. 2. Old N. B. 50. F. N. B. 94, 98. 5 H. 7. 41. 9 H. 7. 22.*

Kelm. 89. If my Servant sells my Horse, or other Goods, and he warrants it, and it hath a secret Fault, the Buyer can have no Action against me upon this Warranty; for the Master cannot be bound by any Act of the Servant, but by such as he doth agree unto. *Doff. and Stud. 138. 9 H. 6. 53. Bridgman's Rep. 128.*

If one sells me Corn or Grain, and warrants it good, and it is not so, I may have this Action. *Lib. Inter. 9. B. Regist. Orig. 111. A. See Noy's Rep. 124.*

If one sells me Sheep, and warrant and promise them to be sound, and to be well worth Nine Pounds a Score, and if they be not of such a Value, that he will make them worth Nine Pounds a Score to me in ready Money: This is a good Promise, and if they be not sound,

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found, and not worth so much, I may have this Action against him upon it. *Telverton*

114.

If a Man sells me Wood, and shews me a part of it, and warrant the rest of it to be as good as that; if it be not so, I may have this Action. 14 *H. 6. 22. Pl. 66. Action, &c. 9.*

If one sells me a Sapphire for a Diamond, and warrants it to be a Diamond, and it be not so, I may have this Action against him upon this Warranty. *Kitch. 174. Survey of the Law 106.*

A Warranty of a Thing that is out of a Man's Power, as that Seed shall grow, or the like, is void, and no Action will lie upon it: But to say, that it came out of such a Garden or Country, is good, and may be Actionable if not true. 11 *Ed. 4. 6. 7. Deceit 23.* But if I warrant Sheep I have sold, that they shall be found for a Year; this is good, and an Action may lie upon it. So a Warranty, that such a Ship shall return safe to *Bruges. Owen's Rep. 60.*

If the Sale be at one Time, and the Warranty afterwards at another Time or Place, albeit it be by the same Person, yet it is held to be void, and that no Action will lie upon it. 5 *H. 7. 41.* But if it be by Writing sealed, &c. he may have an Action of Covenant upon it. 9 *H. 6. 53. 14 H. 6. 24. 11 Ed. 4. 8.*

A Warranty therefore upon a Sale that shall bind, must be made at the time of the Sale of the Thing. *Stile's Regist. 344. 15 H. 7. 41.*

N. B.

N. B. 98. L. And not afterwards. Dyer 75.
 9 H. 6. 53. Action, &c. 5. 7 H. 4. 15. Fitz.
 fol. 94. And so it seems clear of dead Mear,
 Action, &c. 27. And yet it is said, that if the
 Vendee shall taste it, and accept it for good,
 no Action will lie for it. H. Action upon the
 Case, 48. 15. And yet if the Seller undertake
 it shall endure good until, &c. and it doth
 not so, he may have Action for this. P. 7 H. 4.
 15. Action, &c. 27.

If one sells me Twenty Sheep to kill, and
 they be corrupt, I may not have this Action
 for the Deceit without a Warranty: But if
 he sells dead Mutton corrupt, I may have it;
 for by the Law no Man may sell corrupt Vi-
 ctuals by the Statute. F. N. B. 98. K. 5 H. 7.
 41. 11 Ed. 4. 6. Deceit 23. So of corrupt
 Wine. 7 H. 4. 15. Action upon the Case, 27.
 See after.

If one sells me Herrings, and warrants them
 good, and they are naught; this Action lieth.
 Regist 96. A.

If a Physician or Chirurgeon, Farrier or
 Smith, warrant a Cure for good Considerati-
 on, and doth what he can, or ought to do for
 the Cure, and doth it not, it seems this Acti-
 on will lie upon this. 48 Ed. 3. 6. For if a
 Chirurgeon for a Man, or a Farrier for a
 Horse, do warrant or promise a Cure, and do
 not cure, altho' he be not negligent, this A-
 ction will lie against him: And if he undertake
 the Cure without Warranty, and be negligent,

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an Action of the Case lieth. *Plow.* 305. *Doct.* and *Stud.* 105. 17 *Ed.* 4. 29.

If one sells me, for good Consideration, Twenty Quarters of Corn, or Malt, and after converts the same to his own Use after I have demanded it, and he hath denied it, it seems I may have either this Action, or an Action of Detinue at my Election. 20 *H.* 7. 9.

This Action will lie for Money upon the Sale of any Personal Things. 33 *H.* 8. *Brog.* *Action of the Case*, 105. 110. 2 *R.* 3. 14. *Com.* 102. For in every Contract, there is an *Assumpsit* implied. *Coo.* 4. 94. And he needs say no more in his Court, but *Sapius Requisitus.* *Pasche*, 28 *Eliz.* *Co. B.* Nor hath he need to say, that he was possess'd *Ut de bonis Propriis.* *Trin.* 7. *Jac. B. R. Fitz-William and Blackman.*

It will lie against a Purveyor or Servant that buys Goods for his Master, and promises Payment for it. *Dyer* 230. 12 *H.* 8. 12.

So against him that shall promise to me, a Baker, to pay so much as he shall deliver in Bread to *B.* 29 *H.* 8. 25.

So upon a Promise to pay for Cloth bought of me by *B.* if *B.* doth not pay for it. 12 *H.* 8. 12.

If I sell to *B.* Two Weights of Barley for as much as I have sold to others; in this Case the Contract is good: But in my Action upon it, I must shew for what I sold it to others; and I must give Notice thereof to the Defendant.

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If one sells me Corn, and promises to deliver it me at a Day, and I pay, or promise the Money for it, or I give Earnest, or pay part of the Money, and he doth not deliver it at the Day; I may have this Action. 20 H. 7. 9. *Dyer* 22. 113. *Coo.* 4. 94. So if he promises to deliver me good and merchantable Corn, and doth not. *Dyer* 75. 6 *Ed.* 2. 6.

If one buys any Thing of me, and doth not take it away in convenient Time, but suffers it to lie upon me to hurt me, I may have this Action against B. 13 H. 4. *Action of the Case*, 48.

If one sells me another Man's Goods for his own, knowing them to be none of his own, I may have this Action, otherwise it is if he does not know it. *Croo.* 1. *last Publish'd*, 44. And therefore, if one takes away another's Horse and sells him to me as his own, and after it is taken from him upon an Execution for the Owner's Debt; I may have this Action against the Seller. 42 *Aff. Pl.* 8. *Action, &c.* 42. The Declaration therefore in this Case must say, *Sciens*, that they were the Goods of a Stranger, or it is not good. *Croo.* 1. *last Publish'd*, 44. *Croo.* 2 *Part*, 196. 197. See *Deceit*, Chap. 6.

If one upon a Contract of Sale promises to deliver me good Gum and delivers me bad, or sells me good Wax and delivers me bad, I may have this Action. So for other Things in like Case.

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Case. *Mich. 7 Jac. B. R. Weston and Deighton. Survey of the Law. 164. Dyer 75.*

If one sells me corrupt Victuals, Bread, Beer, Apothecaries Drugs, Raisins, or other Things for Food or Physick, and knows it to be Corrupt and Unwholesome; I may have this Action for the Damage done to the Health of any Body. 19 *H. 6. 53.* 22 *H. 7. 91.* 1 *Ed. 4. 6. Kelm. 91.* 11 *Ed. 4. 6. Croo. 2 Part, 196, 197.*

So if one shall sell me Wine mixed with Water. *N. B. 88. F.* And yet if the Buyer or his Servant shall see and taste the Victuals, or the Wine, and like and accept it; in this Case he cannot have this Action for the Deceit. 7 *H. 4. 16.* 13 *H. 4. 2.* But for false and sophisticated Wares or Merchandizes sold, no Action (as it seems) will lie, unless there be a Warranty in the Case. *Dyer 75, 76.* And yet see *Kelm. 89.* 7 *H. 4. 10.* 13 *H. 4. 2.* 9 *H. 6. 52.* 11 *H. 6. 22.* 19 *H. 6. 49.* *F. N. B. 88.*

If one sells a Horse that is not sound to me, and knows it to be unsound, albeit he doth not warrant him sound, yet I may have this Action. *Coo. 4. 18. 42 Ass. 8.* So if one sells me naughty Cloth for good, knowing it to be naughty. 21 *H. 7. 91.* See before. But if one sells me a Horse which is unsound, without any Warranty, and I know him to be unsound, I can have no Action upon this Sale. *F. N. B. 94.* 31 *H. 6. Statham. Action, &c. Pl. ult. 7 R. 2. Monstrame de Fait, 160.*

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So if one sells me Corn or Grain, and warrants it to be good, and it is not. *Lib. Intr. 9. B. Regist. Orig. 111.*

If one sells me Land, Goods or Cattle for his own, that are none of his own, and the Thing is afterwards taken from me, or I be molested about it by the right Owner, I may have this Action. *Coo. 4. 18. 42. Aff. 8. Broo. Action, &c. 85. Fitz. 4.*

If one sells me Land, and agrees to make me an Estate of it before a Day, and this is upon good Consideration that he performs it not; I may have this Action.

How Contracts and Promises shall be taken, and where they shall be said to be performed, or broken, or not.

FOR the opening of the Answer to this Question, take these Things:

1. That every Contract is rul'd much by Equity, and the Law doth much heed what is according to Equity therein.

2. That the Intent of the Parties to the Contract doth much rule therein, and is more heeded in Law than the Form of Words: And therefore if they agree upon a Thing, and the Words spoken or written to declare their Agreement

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greement be not apt and proper, yet if their Minds can be gather'd by it, it may be good enough. And the Words, to find out their Minds therein, shall be taken according to the common Acceptance of such Words, in the Time and Place where they are spoken.

3. That a Thing incertain therein, for Time, Place, or otherwise, may be made certain by a necessary Coherence and Relation to other Things. *Popham* 182.

4. That in case of a doubtful and incertain Contract wherein there is a Sale, the Words shall be taken most in favour of the Buyer, and not against the Seller.

5. That the whole Contract may be consider'd together, and as an intire Agreement; Or in the Parts thereof, as it doth consist of an Inducement, Cause or Consideration, and of a Promise or *Assumpsit*: And therefore, as each Part thereof is to help to shew the Meaning of another Part thereof; so it is to be consider'd as the Consideration of a Promise it self; and in both, the Intent and Meaning of the Parties to be pursued and perform'd, not in the Letter, but in the Substance of it. *Telverton* 87.

But for the further opening thereof, take (for the present) these following Cases:

If one, in Consideration that I will procure him the Loan of Ten Pounds for an entire Year, assumes to make me a Lease of such a House for Three Years; this is good: But it

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will not be sufficient to set forth, I did procure him the Money, some at one Time, and some at another; and yet if it be of several Persons, or Part at one Time, and Part at another Time, so it be all in one Day, that he hath it a full Year, it is good enough; the Consideration must be perform'd in the Substance, as well as in the Letter of it. So if it be to be paid in Gold, Payment in Silver is not a Performance, nor will the Acceptance of it by the other amend the Matter. *Telverton* 87.

If one have Seventeen Tod of Wool by him to sell, and I bargain for Fifteen Tod of it at my Choice, and he, in Consideration of Six Pounds to be paid by me such a Day, promises to deliver it to me such a Day; this is good: But if I sue upon it, I must shew, that I have chosen out my Fifteen out of the Seventeen Tod, for this is a Condition Precedent. And yet if he sells any of it before my Choice made, this will make the Promise absolute, and will be a Breach of it; so if he deny me to see it, and make my Choice of it. *Telverton* 76.

If a Contract be for Sale of Tods, Pounds, Bushels, Yards, or Ells of any Thing, it shall be accounted, measur'd and reckon'd according to the Custom of the Place, and not according to the Statutes. *Kelm.* 87. 17 *H.* 8. 14. *Plow.* 41. 140.

If an Agreement be in *Lincolnshire* for Eight Strikes of Corn, this shall be taken for a Bushel of Corn, for Eight Strikes there make a Bushel. *Bulstr. 1 Part 135.* If a Contract be to give for a Thing Twenty *French* Crowns, this shall be taken for Six Pounds. *Croo. Rep. 1. 141.*

If one agrees for the buying of any Thing at the Price of Twenty Pieces, it shall be taken for Twenty Pieces of Gold of Two and Twenty Shillings a Piece, for this is the common Intendment of the Word. So a Silver Salt may be taken for a Salt seller. *French* Pieces shall be taken for *French* Crowns known here. *Croo. 1. 141.*

If one promises to give me a Cup of Wine, if I come to his House; if I do so, I must have but Wine in a Cup, and not the Cup also. *Bulstr. 1 Part 175. 27 H. 8. 27. Plow. 86.*

If a Contract be for Twenty Barrels of Ale, or Ten Pottles or Cups of Wine; the Buyers shall not have the Barrels in the first Case, nor the Pottles nor Cups in the next Case: But if the Bargain be for the Hogsheads or Firkins of Wine; in these Cases he shall have the Hogsheads, and Firkins also. *Plow. 86. 17 H. 8. 27. Broo. Contract. 4 Bulstr. 1 Part 175.* And if one promises to do a Thing, as make a Feoffment, Surrender, or the like; the Meaning is, That a good and legal Feoffment, Surrender, &c. be made. *Dyer 23, 24, 75.* So if it be deliver'd Wares, it must be good, not false and sophisticated Wares, or else it is not

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said to be perform'd. And for this, if one promises to make a Feoffment by a Day, and before the Day he infeoff another, or grant a Rent-Charge out of it, and then makes the Feoffment at the Day: This is no good Performance of the Promise. *Old B. of Entries, fol. 7. 3 H. 7. 14. Fitz. 8. B.*

If one, for good Cause, promises to make good a House; this shall be taken to repair it.

And if one owes me Twenty Pounds, and I say I will sue him, and J. S. prayeth me to forbear till *Michaelmas*, and he will make it good to me: This shall be taken that he will pay it to me. *Mich. 21 Jac. Keyl's Case.*

If one promises to do one of Two Things by a Day, till the Day be past, he that made the Promise shall have Election; but after the Day is past, he to whom the Promise is made shall have the Election. *9 Ed. 4. 39. Co. 9. 94.*

If it be a Part of a Promise to give a Bond with Sureties, and say not what Sureties, nor in what Sum, the Court must judge what Sureties, and in what Sum. *Hob. Rep. Pl. 79.*

If one be indebted to another, and he do promise this Debt at a Day to come; in this Case, the Party to whom the Promise is made, cannot bring his Action for the Debt upon the first Cause, till the Day be past, by Two Judges. *B. R. Stile's Register 31.*

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If the Promise be to pay Money, and no Time set, it shall be paid presently. If to make a Lease for Years, and no Time set when it shall begin, it shall begin presently. *Coo. 10. 76. 102.*

But if one promises to deliver me Goods, or to make a Lease, or the like Thing, and no Time is set for the doing thereof, he shall have all his Life-time to do it, unless I hasten it by Request. *Coo. 6. 33. Coo. 10. 77.*

If a Promise be to make a Lease for Years indefinitely, and say not when to begin, it shall begin presently. *Coo. 10. 33.*

If I retain a Servant generally, and not say for what Time, the Law will construe it to be for one Year, according to the Statute, 23 *Ed. 3. Chap. 1.*

If a Promise be to provide Wedding-Apparel for a Woman; this shall be taken for Wedding-Apparel to be used the Wedding-Day, and Time of Feasting, which commonly is some Days after, according to the Dignity of the Person. *Croo. 1. 38.*

If a Promise be to make sure a Portion of Six Hundred Pounds: This will be understood, that he doth undertake she shall be worth to him Six Hundred Pounds. *Croo. 146, 147.*

If one promises to me to make me such an Estate of Land, as my Council shall advise, I must and may take the Advice from my Council, and make it known to him that makes the Promise what it is; and if I do misreport it,
yet

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yet if he do that which he reports it to be, he is discharged. *Croo. I Part, last Publish'd, 298, 299.*

If one bargains and sells his Land by Deed indented, and the Trees upon it, and the Deed is not indented, so that the Land passeth not, the Trees will not pass neither. *Coo. II. 48.*

If one sells all his Trees in such a Wood, and it is agreed that the Vendee shall not cut them till *Michaelmas*, and in the mean time Hawks do breed in the Wood, it seems the Vendor, and not the Vendee, shall have the Hawks. *27 Ass. 29. See Coo. II. 54.*

If one assumes to me to make me such an Assurance of Land as my Council shall advise, and I advise it my self, and require it, he is bound to do it as he requires. *Croo. I. last Publish'd, 466.*

If one makes Lease of Land for a Year, excepting the Trees, and Hawks breed in the Trees upon the Land, the Lessor, and not the Lessee, shall have the Hawks. *14 H. 8. 1. Kitch. 264.*

A Promise to forbear a Debt till such a Day, shall be taken for to forbear to sue for it. *Croo. I. last Publish'd, 477.*

If a Promise be in Consideration of a Lease made, and say not what Lease, it may be any Lease for Life, Years, or at Will, and therefore not a good Consideration alone. *Croo. I. last Publish'd, 566.*

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If the Lessor assumes to the Lessee, for good Consideration, that he shall hold the Land without the Let of any Person whatsoever; this shall be taken, Let by one that hath or that hath not Title. *Dyer* 328. *Mich.* 7 *Jac.* B. R. *Gamble's Case.*

A Consideration, that the Creditor will give the Debtor Day of Payment for a former Debt for one Year, is a good Consideration, and it shall be taken in the common Sense for the deferring of the Day of Payment. *Croo.* 1. *last Publish'd,* 643, 644.

If a Promise be to enter into a Bond to pay Money, and no Sum express'd, the Sum shall be twice as much as the Money to be paid. *Croo.* 2. 115. So if it be for another Thing, it shall be a reasonable Sum. *Croo.* 2. 652.

If my Tenant at Will of my House promise for good Cause to save me harmless, and indemnified from all Loss and Harm by reason of his Inhabitation in the House, and the House is burnt by the Neglect of his Servant; this is a Breach of his Promise. *Coventrie's Case.*

If I promise to J. S. that his Goods shall come safe to Dale, and they be arrested by the Way; this is a Breach of Promise, and Actionable. *Coo.* 3. 47.

If one be indebted to me Money for divers Causes, assumes to pay the same to me before the beginning of my next Journey to London; if I sue for this; and set forth a Journey, I must
averr

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averr it to be next Journey to *London*. *Telverton* 175, 176.

If one be bound to do a Thing be Law, the which he hath also undertaken by his Promise to do, if by Law he be now discharged, perhaps he may not be bound by his Promise. *Tel.* 207.

If one, for good Cause, promises me Five Pounds, or a Gown, such a Day, he that is to pay hath the Election till the Day; but after the Day, he to whom it is to be paid shall have the Election. 9 *Ed.* 4. 39. *Fitz. Debt.* 89.

If one promises another he shall enjoy the Land for Five Years, and he in Consideration thereof promises to pay him Twenty Pounds for every Year at Two Feasts; here several Actions will lie at every Day: But if the Promise be, he shall enjoy the Land for Five Years, and for this shall pay him a Hundred Pounds in Five Years, viz. Twenty Pounds *per Ann.* there no Action will lie till all the Time be past. *Croo.* 1. *last Publish'd*, 118. *Owen's Rep.* 42.

If one, for good Cause, promises to deliver me Twenty Quarters of Barley every Year during my Life; if he fails once, I may have this Action, and so upon every Failure. But herein it will be Wisdom in the Plaintiff to declare, and to lay down his Damages for all the Time; for happily he may not have the Advantage of a new Action. *Croo.* 505. *Telverton* 66, 67. But in these Things, it seems the Law was otherwise taken heretofore. See *Bendl.* 3. 158. *Croo.* 3. 22.

So

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So if a Sum of Money be given in Marriage, to be paid at several Days, and here upon one Failer, perhaps, he may have Damages for all. *Dyer 113. Broo. Action, &c. 108.*

If one promises to pay Money at several Days, or Yearly or Quarterly, no Action of Debt will lie till all the Days be past. But this Action of the Case will lie after the first Day. *Croo. 1. last Publish'd, 776, 807. Croo. 2. 504. Coe. 10. 128. 12 H. 6. 18. Bulstr. 1 Part 155: 2 Part 136. Coe. 4. 94. Dyer 113. Broo. Sect. 1. Croo. 1. 175. 492.*

Bar or Discharge of an Assumpsit.

If *A.* be in Execution for *10l.* at the Suit of *B.* and *C.* comes to *B.* and promises him, If he will set *A.* at Liberty, that he himself will see him satisfied: To which *B.* agrees, altho' *C.* afterwards before *B.* hath done any Thing by reason of the Promise comes to *B.* and forbids him to discharge him, and says he will not stand to his Promise, but revokes it; yet this is no Bar in an Action upon the Case upon the Promise. *Rolls Abr. 1 Part 32. A. 1.*

An implied Assumpsit, or Assumpsit in Law where Debt lies, and likewise where Debt lies not.

EVERY Contract made between Parties, doth in Law imply in it self a Promise that they will perform the Contract, and where one doth become legally indebted to another, the Law creates a Promise that he will pay this Debt, and if he does not, an *Indebitatus Assumpsit* lies against him to recover the Debt. *Trin. 24 Car. 1. B. R. See Croo. 1. 250.*

If an Hostler gives my Horse Meat, or a Taylor makes my Garment; he may have this Action for the Meat, or for the Work, upon this implied *Assumpsit*, and the one may keep the Garment, and the other the Horse till he be paid; or if they deliver the Thing, they may have this Action, or an Action of Debt at their Election for the Money. So if I come into an Inn and call for Provision, the Law makes up this *Assumpsit*, upon which the Inn-keeper may have either this Action, or an Action of Debt. *Finche's Law, 180. Croo. 2. 626.*

If one delivers to me any Thing but Money to deliver over to another, or to the Use of another, or to be employ'd to any other Purpose,

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pose, or upon Condition, That if he do such a Thing, I shall keep it. In these, and all such-like Cases, some think there is an *Assumpsit* imploy'd, upon which this Action will lie in case of Breach of the Trust. *Dyer* 21, 22. &c.

If Two account together, and thereupon the one of them is found indebted to the other; it seems the Law implies a Promise in this, and that he to whom it is due may have this Action without any Promise, and suppose a Promise to pay it. *Hob. Reports Pl. 117.*

If one bids me do Work for him, and do not promise any Thing for it; in this Case the Law implies the Promise, and I may sue for the Wages, and set forth in my Declaration, that I deserved so much for the doing of it. *Trin. 8 Car. 1.*

Every Executory Contract is said to import in it an *Assumpsit* in Law, and one may have Debt, or an Action upon the Case upon it at his Election; for when one doth agree to pay Money, or deliver any Thing, thereby he promises to pay or deliver it; and therefore when one selleth any Goods to another, and agreeth to deliver them at a Day to come, and the other in Consideration thereof promises to pay him so much Money: In this Case, both Parties may have an Action of Debt, or an Action upon the Case upon *Assumpsit* at his Choice; for the mutual Executory Agreement of both Parties importeth in it self a reciprocal Action upon the Case, as well as Action of Debt. *Plow.*

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128. Cook 4. 94. 9. 87. And in this Action, the Plaintiff shall not only recover Damages for his special Loss, if any be, but he shall recover the whole Debt, and a Recovery or Bar in an Action of Debt, shall be a Bar to an Action of the Case for the same Thing. *Cooke's Reports*, 9. 87. 4. 94.

If Two refers Matters in Difference between them to Arbitrators, each of them may have this Action against the other for not abiding to, and performing the Award, upon this bare Submission to an Award without any express Promise. *Coke's Reports*, 5. 77. *Crook* 1. 280.

If a Man brings his Horse to an Inn, and there leaves him without Agreement what to pay, the Hostler may keep him till he hath his Money; but where it is agreed what he shall have for keeping, the Owner may take him away without Payment, and the Hostler may sue upon an *Assumpsit* in Law. *Telverton*, 66, 67.

A Taylor may keep the Clothes he makes till he be paid for them; but he cannot sell them and pay himself, as the Hostler may the Horse, if no Agreement what to pay him: But if there be a Promise to the Taylor what he shall have, he must sue for it upon the *Assumpsit* in Law, and have as much as he deserves, if the Owner takes them away without Payment. *Telverton*, 66, 67.

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An Executor or Administrator cannot be charged in Debt upon the Contract of the Deceased; but this Action upon the Case will lie upon the implicate *Assumpsit*: And therefore if one receive my Money to Account, and he and I cast it up and agree in certain what is due, and then he dies, I may have an *Assumpsit* against the Executor or Administrator for what was cast up and agreed, albeit I cannot have an Account. *Cooke's Reports*, 4, & 8, 94, 133. For by an Account between the Parties, that which was before is made certain, and upon this an *Assumpsit* will lie upon the Consideration in Law. *Telverton* 70.

Every Executory Contract, and every Debt that is not upon Record, or upon a Specialty, or for Rent upon a Lease, which may be turned into Damages, as upon an Account, or upon a Buying, or upon an Agreement, hath this implicate Promise in it, and the Plaintiff may say the Defendant did promise it, and make the Debt or first Cause the Consideration of it.

If I deliver Goods to a common Bargeman that is used to carry from and to such Places, and give him Two Shillings for the Carriage, and he negligently loses them, I may have this Action, albeit he makes no special Promise to me about it upon an *Assumpsit* in Law. *Croo.* 2. 330.

And if Two submit to the Award of a Third Person for all Differences between them without any *Assumpsit*, this will be Actionable if they

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do not perform it when it is made. *Croo. 1. last Publish'd, 70.*

If I retain one as of my Council, or as an Attorney, and he doth promise to follow my Suit, and doth it not, or doth it not faithfully and diligently, I may have this Action, albeit I give him nothing for it, for he is bound *ex Officio* to do it, albeit he doth not promise it. As if a Serjeant or Councillor promises to plead for me in my Suit, and pleads amiss: Or an Officer in a Court promises to do any Thing belonging to his Office; as a Clerk to inroll a Jury, or the like, and he doth it not; the Party hurt hereby may have this Action. *14 H. 6. 18.*

By the Custom of *London*, if a Merchant subscribe a Bill of Exchange directed to him by another Merchant, an *Assumpsit* lies. *Rolls Abr. 1 P. 6. M. 2.*

If I deliver 20 *l.* to *B.* to pay it to *C.* or to the Use of *C.* *C.* may have an Action upon the Case upon the Promise for it against *B.* *Rolls Abr. 1 P. 32. Z. 13. 1 P. 7. N. 2.*

The *Assumpsit* commences with the Certainty of the Debt upon the Account. *Ib. 1 P. 7. N. 1.*

If there be an Award, that a Collateral Thing shall be done, and not that any Money shall be given, neither *Assumpsit* nor Debt lies. *Ib. 1 P. 7. N. 3.*

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If one that has no Title receives my Rent as my Landlord, &c. I may have an Action upon the Case upon the *Assumpsit*, scil. an *Indebitatus Assumpsit* against him: The same Law is where the Payment is in Satisfaction of any other Duty. *Sydersin* 2. 4. *Bonnel* against *Fouke* late Lord Mayor of London.

Assumpsit lies for Money due for Soccage by Custom, without any express Promise. *Levinz* 2 Part 174. *Mayor, &c. of London* against *Gorry*; and also for Money forfeited by a By-Law made by a Corporation. *Levinz* 2. 252. The *Barber-Surgeons* against *Nelson*.

Two pretend a Title to an Office, one receives the Profits, the other brings an *Assumpsit* for the Money receiv'd to his Use, and therein proves his Title; this is good. *Levinz* 2 Part 245. *Howard* against *Wood*.

*Assumpsit in nature of Debt does not lie
where it is real.*

If Rent be Arrear, and the Lessee promises to pay it without any Consideration of Forbearance, or other good Consideration, an *Assumpsit* does not lie, because he may have an Action of Debt upon the real Contract. *Rolls Abr.* 1 Part 8. O. 59. *Ib.* 1 P. 7. O. 1, 2. The like, tho' the Term be ended.

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Tho' the Agreement may amount to a Lease, yet when an exprefs Promise is laid, the Action lies; and it may be given in Evidence, that it was reserved upon a Lease upon *Non Assumpsit* pleaded. *Ib.* 1. P. 8. O. 7. Adjudged upon a Demurrer.

Upon Account in *Simul* for Arrears of Rent, it is become a Debt Personal, and therefore upon a Promise to pay it, an *Assumpsit* lies. *Ib.* 1. P. 9. O. 11.

An exprefs Promise, that in Consideration that one shall let to him certain Lands for Three Years, for the Rent of 25 *l.* per Ann. payable at *Michaelmas* and *Lady-day*, he will pay the said Rent at the said Feasts: This is Collateral to the Reservation, and will continue tho' the Lessee assign over, and the Lessor accept the Rent of the Assignee; and this Personal Contract is not determin'd by the making the Lease which is real, because it was intended by the Parties at the beginning of the making of the Lease, that it was made for the better Security of the Payment of the Rent according to the Reservation. *Ib.* 1 P. 8. Crook 3. 414. *Action against Simmons*, being the same Case.

In Consideration that the Plaintiff promis'd to make a Lease for Two Years to the Defendant, the Defendant promis'd to pay 20 *s.* at every Quarter, &c. no Rent was reserved upon the making of the Lease, and the Promise was not to pay out of the Land, but is a Sum in
Gross,

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Gross, therefore an *Assumpsit* lies. *Rolls Abr.*
1 P. 7. O. 3. But if the Plaintiff agrees with
the Defendant, that he shall hold certain Land
for certain Years, and the Defendant promises
for it to pay him 20s. at every Quarter, &c.
an *Assumpsit* does not lie; for that is a Rent,
in as much as he promis'd to pay for it at the
same Time that the other let the Land to him.
Ib. 1 P. 7. O. 4.

If one promises me in Consideration that he
may have and enjoy quietly the Harbage of
such a Park for Three Years, that he will pay
me Ten Pounds: This is a good Consideration
and Contract, on which this Action may lie.
Croo. 1. 250. *Sir G. Mansell.* 17 *Jac.* *Adjudged.*
And yet if I let Land to one for a Year, who
doth promise to pay me for this Lease at the
Years end Twenty Pounds; not this Action,
but an Action of Debt lieth for it. *Croo.* 1.
last Publish'd, 786.

It there be a Question between me and ano-
ther Man about a Rent, and he say to me, If
I will shew him any Deed, by which it shall
appear that he ought to pay me such a Rent,
that he will what is due for the Time past, and
hereafter from Time to Time; this is a good
Promise. *Leonard's Reports,* Pl. 240.

If one have a Lease for Years of my Wife's
Land; and another Man, in Consideration that
I will procure him to assign this Lease to him,
doth promise to pay me the Rent for all the
rest of the Term: This is a good Consideration

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tion and Promise; and the Husband alone may sue for it upon this Promise. *Leonard's Rep. Pl. 55.*

An Action upon the Case upon an *Assumpsit* lies not upon a general *Assumpsit* to pay Rent: But if the Consideration be to forbear the Rent till such a Day, and the Promise be grounded on this, it is good. *Croo. 1. 250.* But by *Rolls*, Chief Justice; If one makes a Lease for Years of Land, rendering Rent, and after the Lessee promises the Lessor to pay the Rent; an Action may lie upon this Promise, if the Promise be made at the Time of the Lease made, which must be averred in the Declaration expressly to be so. *Stiles 400. Telverton 20.*

A. in Consideration that *B.* will suffer him to enjoy *White-Acre*, promiseth to pay him Three and Fifty Shillings a Year Rent so long as he enjoyeth it; this is good. *Stiles Rep. 463.*

This Action will not lie for Rent upon a Promise in Law, but it will lie upon a special Promise of the Party. *Stiles Rep. 463.*

If one owes me Money for Rent behind, and I demand it, and he doth assume, That if I can shew him a Deed that the Rent is due, that he will pay me the Rent and Arrearages thereof: This is a good Consideration to ground an Action, if I do shew him the Deed by which it was due, &c. *Croo. 1. 67.*

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If one, in Consideration that he shall occupy and enjoy such Lands from such a Day for Five Years, promises to pay me Twenty Pounds for every Year at Two Feasts: This is a good *Assumpsit*, and for Non-Payment every Year, I may have this Action. But if the Promise be, that he shall enjoy the Land for Five Years, and in Consideration thereof that he shall pay me an Hundred Pounds in Five Years, *viz.* Twenty Pounds *per Ann.* there no Action will lie for Part, till all the Years be expir'd. *Croo, 1 Part, last Publish'd, 118.*

If I suffer a Man to occupy a Ware House in *London*, and the Tenant doth assume to pay to me for every Week he enjoys it Eight Shillings: This is a good Promise, and this Action may lie upon it; for it is no Lease at Will or otherwise, nor Rent; for if so, this Action will not lie for it, but an Action of Debt. *Croo. 598.*

Assumpsit to pay Money for Enjoyment of Land, lies upon an express Promise; which must be prov'd, and not upon a Promise in Law arising upon the Contract, there being an express Promise, it is Collateral, and as a special Agreement to pay, &c. *Levinz 3 Part 150. Johnson against May.*

Indebitatus Assumpsit for Tythes, tho' Tythes are in the Realty, for which an *Assumpsit* does not lie no more than for Rent, it may be intended for Tythes severed, and then an *Assumpsit* lies. *Levinz 1 Part 141. Wright against Beel.*

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Assumpsit, that if the Plaintiff would consent that he should enjoy the House as *L.* did, he would become his Tenant as *L.* was, and pay the Arrears, and that he consented: The Plaintiff being Devisee of the Reversion, his Permission was a good Consideration, whether the Defendant had the Title under *L.* or no. 2. The Promise to become his Tenant as *L.* was, extends to pay the growing Rent as *L.* ought to have done, and the Action lies upon this express Promise, tho' there be a Lease. *Levinz 1 Part 204. Chapman against Southwicke.*

Assumpsit does not lie where there is a Specialty.

An Action of Covenant lies where a Promise is made by Deed, and not an *Assumpsit*. *Rolls Abr. 1 P. 11. P. 21.*

Assumpsit uncertain.

The Consideration to assign the Term, and the Promise to pay the Money, shall be taken to be done within convenient Time. *Rolls Abr. 1 P. 4. S. 1.*

To spare him till such a Time, shall be taken that he will not sue him. *Ib. 1. P. 15. S. 3.*

An *Assumpsit* is not good to pay so much as he shall deserve for Foldage of Sheep in his Ground, bec ause

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because it is in nature of a Trespass. *Ib.* 1.
P. 15. *S.* 5. *Quere.*

Tho' it be impossible for *C.* to pay to *B.* such a Day, if *A.* does not pay him the same Day, yet the Substance of the Promise is to pay it, which ought to be upon Request. *Ib.* 1. *P.* 15. *S.* 6.

In Consideration that *B.* will trust him for his Diet, he promises to pay him 10*l.* it shall be intended to *B.* *Ib.* 1 *P.* 30. *Z.* 1.

If there be a Communication between the Father of *A.* and *B.* for a Marriage between *A.* and the Daughter of *B.* and *B.* affirms and publishes to the Father of *A.* that he will give to whosoever marries his said Daughter by his Consent 100*l.* and afterwards *A.* marries the said Daughter, yet he shall not have any Action upon this Promise, for that *B.* does not mention to whom he made the Promise. *Ib.* 1 *P.* 30. *Z.* 2.

A good Assumpsit, a lawful or unlawful Assumpsit.

If a Councillor promises to gain the Manor, it is a good Assumpsit, but it must be for some Consideration besides his Fee. *Rolls Abr.* 10. *P.* 8, 96. *Z.* 7. *Tit. Disceit.*

An Assumpsit that he will shut up Shop, and never more keep Shop within the same Town, is good. *Ib.* 1. *P.* 16. *T.* 5.

A co-

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A covenous Promise is not good ; as if the Daughter promises her Father, That if he will give so much more with her in Marriage as her Suitor requires, she will repay it again to her Father after the Marriage. *Ib.* 1 P. 21. V. 16.

If *A.* promises the Wife, or Attorney of *B.* who is absent, and afterwards *B.* agrees to the *Assumpsit*, altho' the Wife or Attorney have no Authority to make any Agreement, yet his Agreement to it afterwards is sufficient. *Rolls Abr.* 1 P. 31. Z. 10. 1 P. 32. Z. 11.

An *Assumpsit* by the Obligee to one of the Two Obligors who has perform'd the Condition, that he will sue the principal Obligor, and pay to him so much as he recovers, or shall have by Composition, is good ; for it is not Maintenance in the Obligor, for all that the Obligor does, and pays, ought to be perform'd by the said principal Obligor. *Ib.* 1 P. 17. T. 9.

The Sheriff's Bailiff having one in his Custody, takes a Promise of *J. S.* to deliver the Prisoner to the said Bailiff in safe Custody the next Morning, tho' it was objected, that when the Bailiff left his Prisoner in another House and Custody, it was an Escape, for *deputata non potest deputari*, and so the *Assumpsit* is against Law ; yet by the Court it is a good *Assumpsit*, and they will not intend that the Bailiff was absent from the Prisoner. *Syderfin* 1 Part 132. *Benskin* against *French*.

Note,

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Note, Reader, That *Levinz* reports this Case a different Way, *scil.*

In Consideration that the Bailiff would let the Party arrested lie at the Defendant's House one Night, the Defendant promis'd the Bailiff *ex Parte querentis*, to deliver the Party to the Bailiff the next Morning, or to pay the Debt; this is no Escape, and the Promise being laid to be made to the Bailiff *ex Parte querentis*, it shall be intended that she lay there by the Assent of the Plaintiff, and therefore a good Consideration. *Levinz* 1 Part, 98. *Benson* against *French*. But by *Syderfin*, *Benskin* against *French*.

Assumpsit to a Bailiff to save him harmless from all Escapes, if he will let one taken in Execution stay Three Days at such a House, good. *Levinz* 1 Part 103. *Freak* against *Clark*.

Assumpsit to pay for a Horse a Barly-Corn, a Nail, and double every Nail, and avers, that there were Thirty Two Nails in the Horse's Shooes, which doubling every Nail comes to 500 Quarters of Barley; but Damages were given but to the value of the Horse, *scil.* 8*l.* *Levinz* 1 Part 111. *James* against *Morgan*.

Assumpsit in Consideration that the Plaintiff would surrender a Term, the Defendant *solvere vellet* 10*l.* This is no Promise, therefore *non Assumpsit* is no Issue to be try'd. *Levinz* 1 P. 164. *Buckler* against *Augil*.

Assumpsit to pay for Wedding-Apparel, may extend to no more than one Suit of Clothes; for Wedding-Apparel is to be taken according

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to the common Parlance for Apparel to be used on the Wedding-Day and Time of Feasting, which is commonly some Days after, according to the Dignity of the Persons. *Croo. 3. 53. Morris against Fletcher.*

Firmam facere in Consideration of Marriage, such a Portion amounts to a warranting of so much. *Croo. 3. 201. Pitchard against Kingston.*

Assumpsit to pay Twenty French Pieces, they are to be intended French Crowns, for they are the common Coin of France, and here known, and it shall be intended according to the usual Speech. *Croo. 3. 195. Pointer against Pointer.*

Assumpsit upon a Bill of Exchange payable to the Bearer, it was resolv'd, that the Custom of London to pay to the Bearer was too general; for perhaps before the Goldsmith hath Notice from the Bearer, he hath paid it to the Party himself to whom he gave the Note. *Levinz 3 Part, 399. Horton against Coggs.*

Assumpsit Port-Jointment.

The Contract being *joint*, and the Consideration *joint*, *scil. 10 l.* jointly given by *A.* and *B.* tho' the Thing to be perform'd upon the *Assumpsit* be several; *scil. the procuring the Cattle of A. and B. to be restor'd to both, scil. to A. his own Cattle, and to B. his own Cattle, yet the Action is well brought jointly.* *Rolls Abr. 1 P. 31. L. 9.*

Where

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Where Two or more join in an *Assumpsit*, the Action must be brought against them all while they are alive; but after the Death of any one of them, it may be brought against the Survivor or Survivors of them, or against the Executor or Administrator of the last Survivor of them. *Brownlow 2 Part, 207. Coke upon Littleton, 331.*

Assumpsit, when it lies.

Assumpsit to pay 20*l.* *scil.* 10*l.* at Michaelmas, and 10*l.* the Day following, an Action lies for Non-Payment of the first 10*l.* before the Second Day is come, for it is alledg'd in the Declaration as an expresse Promise, and in Law Two several Promises. *Rolls Abr. 1 P. 29. X. 3. 1 P. 29. X. 1.*

If *A.* in Consideration that *B.* hath bargain'd and sold to him certain Tuns of strong Beer at the Request of *A.* promises to pay 40*l.* for every Tun, upon the Delivery of Thirty Tuns of strong Beer; an Action lies for so many Tuns, which he delivers before he hath deliver'd all the Thirty Tuns. *Ib. 1 P. 29. X. 2.*

Judgment was reversed, for that the Plaintiff did not averr that *Whitsuntide-Fair*, which was the Time limited for the Payment according to the *Assumpsit*, is yet come. *Ib. 1 P. 29. X. 4.*

Assumpsit to pay 5*l.* Yearly, and every Year, during the Term of Four Years, if a Stranger shall have and occupy a certain Messuage in
D. 10

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D. so long, if the Stranger occupy, &c. One, Two, or Three Years only, or all the Four Years; an Action lies for the several 5 l. due for them before the End of the other Two Years; for the Limitation, *scil.* if he so long occupy, refers to every Year, and not entirely to Four Years. *Ib.* 1 P. 29. X. 5.

Assumpsit by a Stranger to pay the Debt upon Proof made, an Action lies before Proof made; for altho' 'twas objected, that the Plaintiff ought to have procur'd the Debt, to entitle himself to an Action, yet it was resolv'd that it might more properly and more naturally be prov'd to the Jury, and try'd in this Action. *Syderfin* 1. 57. *Traver* against—

Who shall have an *Assumpsit*.

If a Man promises to J. S. to pay to his Daughter 40 l. at her Marriage, she marries; she and her Husband shall not have an Action, but the Father. *Rolls Abr.* 1 P. 30. Z. 3.

If D. for a Consideration promises to C. to pay the Debt of C. to A. an Action does not lie for A. because he is a Stranger, and no Consideration for any *Assumpsit* to him. *Ib.* 1 P. 30. Z. 4.

If an Obligor, being Executor of another Obligor, assigns the Assets to a Stranger, in Consideration of which the Stranger promises the Obligee to pay the whole; an Action lies for the Obligee, altho' no Consideration comes from him: For if a Man delivers Money to
J. S.

J. S. to pay over to *B.* in Satisfaction of a Debt due to him that raises a Debt to *B.* and cannot be revok'd. *Ib.* 1 P. 31. Z. 5.

If *A.* who is the Unkle of *B.* an Infant, delivers 12 *l.* to *J. S.* to educate *B.* the Infant, and in Consideration thereof, *J. S.* promises to educate *B.* and also at his full Age to pay to him, *scil.* *B.* the said 12 *l.* *B.* when he comes to his full Age, may have an Action upon the Case against *J. S.* for the 12 *l.* if he does not pay it according to his Promise; for the Use of the Money in the mean Time was the Consideration of the Education, and the Money was to be paid to *B.* *Ib.* 1 P. 31. Z. 8.

If *A.* delivers 20 *l.* to *B.* and in Consideration thereof *B.* promises to *A.* to cause and procure *J. S.* to pay the said Sum of 20 *l.* to *J. D.* a Stranger, on a certain Day; if *J. S.* do not pay the said Money to *J. D.* *A.* who delivers the Money shall have an Action upon the Case against *B.* upon this Promise. *Ib.* 1 P. 31. Z. 7.

If *A.* gives Goods to *B.* to the value of 80 *l.* out of which he is to pay to *C.* 20 *l.* an Action lies for *C.* against *B.* and *C.* may declare that *B.* was indebted 20 *l.* for Goods to the value of 80 *l.* given to him by *A.* out of which he is to pay 20 *l.* to *C.* *Ib.* 1 P. 32. Z. 13.

If Part of the Consideration is to be perform'd by a *Feme-Covert*, *i. e.* a married Woman, as that she shall instruct one in such a Mystery, and it is averr'd that it is perform'd; accordingly the Husband and Wife may have

an

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an Action as well as the Husband alone. *Sy-
derfin, 2 Part 128. Fountain against Smith.*

The Son and Heir promises the Father, That
in Consideration the Father would forbear to
cut down a Wood to raise Portions for his
younger Children, at his Request to pay his
Daughter a Thousand Pounds: The Daugh-
ter may have an Action for the Thousand
Pounds; for the Son has Benefit by not cut-
ting down the Wood, and the Daughter by
that Means is without a Portion. *Levinz
2 Part 210. Dutton and Uxor against Pool. Ven-
iris 1 Part, 318, 332. Dutton against Pool.
Ib.*

*Assumpsit lies against the Executor upon
the Promise of the Testator.*

If a Promise be broke in the Life of the
Testator, be it for Debt or Collateral, yet
an *Assumpsit* lies against the Executor. *Rolls
Abridgment, 1 P. 14. R. throughout. R. R.
1 Part 266. Sanders and Easterby.*

Consideration.

Consideration.

Several Considerations.

IF one of the Considerations be good, it maintains the Action. *Rolls Abr. 1 P. 30. T. 1. 2. Modern Reports, 284. Smith against Smith.*

If a Stranger promises the Obligee to pay the Debt of the Obligor, in Consideration of Herings given, and of the Assignment of the Bond to him, with a Letter of Attorney to put it in Suit; tho' the buying of Debts be against Law, the first Consideration is good. *Ib. 1 P. 17. F. 12.*

Where the Consideration doth import many Things to be done, and many of them be frivolous and void; yet if any one of them be good, and hath a valuable Consideration in it, this will make the Contract good. *Crook 1. 149.*

If an *Assumpsit* be grounded on Two Considerations, one that may, another that may not be perform'd; if that which may be perform'd be done, it is good enough: And where the Action is grounded upon that which is, and that which is not perform'd, it will fail. As where one for Five Shillings paid, and Five Shillings to be paid at a Day to come, doth assume to do a Thing, it must be averr'd to be

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done ; for if the first Five Shillings be not paid in Hand, or the other were not paid at the Day, no Action will lie upon it : If the one Five Shillings be not paid, or it be not averr'd that the other Five Shillings was paid at the Day, the Plaintiff hath fail'd of his *Assumpsit* in the one Case, and the Declaration is insufficient in the other, for he hath made a Departure from the Consideration. *Popham 32.*

Consideration Lawful, or against Law. Vide Rolls Abridgment.

A Consideration to do a Thing which ought not to be done by the Law, or he is compell'd to do it by the Law, as by a Statute which appoints certain Fees, is not good. *Vide Attorney, Sheriff, Officer, Extortion, &c. Ib. 1 P. 16. T. 1, 2, 3, 5. Vide Maintenance, 1 P. 17. T. 8, 9. Vide Simony, 1 P. 18. T. 13.*

A Consideration, that the Sheriff without a Fee shall execute an Extortion at the Suit of him who made the Promise, which is to pay a certain Sum, which is as much as he is allow'd to take, *by the Statute of 28 Eliz.* is good. *Ib. 1 P. 26. V. 41.*

A Consideration, that the Sheriff upon Request hath made *A.* his special Bailiff to arrest *B.* upon an *Assumpsit*, that he will not bring an Action upon an Escape, if *B.* escapes from the Bailiff, is good. *Ib. 1 P. 16. T. 4.*

It is lawful for any Man to be a Solicitor upon a special Retainer, if it be not for Maintenance. *Ib.* 1 P. 17. T. 8.

An Attorney in one Court may be a particular Solicitor in another Court, but not a general One. *Ib.* 1 P. 17. T. 10.

Illegal Use is no good Consideration for Forbearance, as 10*l.* per Cent. for it is void by the Common Law, if it be not made void by any Statute. *Ib.* 1 P. 18. T. 14.

Assumpsit to pay 60*l.* or 6*l.* per Ann. for the Use and Interest until the 60*l.* be paid, the 6*l.* shall be taken to be *Interesse damni, & non Lucri*, and only limited as a Penalty. *Ib.* 1 P. 18. F. 16.

If *A.* promises *B.* in Consideration of a Marriage between *A.* and *C.* the Daughter of *B.* that he will pay to *B.* 100*l.* at a Time afterwards, and in the mean Time to pay according to the Rate of 8*l.* for the Interest of it; this is a good Consideration, especially it being upon a Marriage, and not for Money lent. *Ib.* 1 P. 18. T. 15.

To bring Witness to swear a Debt before a Justice of Peace, is a lawful Consideration; for tho' he hath not lawful Power to administer such Oath, yet it is not within the Statute *Jacobi*, against Prophan Swearing, because it tends to determine a Controversie. *Modern Reports*, 166. *Anne* and *Andrews*.

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A Promise to assign a Thing in Action, as a Judgment, is a good Consideration; for it may be assigned according to the common Way of Security, for to sue Execution upon it upon a Letter of Attorney, in the Name of the first Party without Maintenance. *Sydersin* 1. 212. *Loder.*

If one arrested at my Suit upon Process, in Consideration that the Plaintiff will let him go at large, and give his Warrant to the Bailiff to set him at Liberty, assumes to appear at the Day at the Return of the Process, or gives to him Ten Pounds; this is a good Consideration and Promise. *Croo*. 1. *last Publish'd*, 192. But if such a Promise be made to the Sheriff, or to any other to his Use, it were not good, being against the Statute of 23 *H. 6.*

If the Terrenant of Land promises me, in Consideration that I do assign to him a Statute I have chargeable on his Land, by Way of Discharge, that he will pay me Twenty Pounds; this is a good Consideration and Promise: But if it were to assign it to a Stranger, *contra*; for this were Maintenance. *Adjudged*, P. 38 *Eliz.*

If one seized of Land in Fee, bind himself in a Recognizance to me, and then enfeoffe *J. S.* of the Land, and *J. S.* in Consideration that I will assign to him my Recognizance, assumes to pay such a Sum of Money by a Day; this is not against Law to assign it to the Terrenant, as it is to assign it to a Stranger. *Croo*, 1. *last*

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last Publish'd, 551. Vide Statute of Will. 3. that enables to assign.

If a Prisoner promises to a Sheriff, in Consideration that he will let him escape, that he will save him harmless, or pay him Ten Pounds; this Consideration is naught, and the Promise void. So if one promises me Ten Pounds if I will maintain him in such a Suit; this is naught. *Cook 10. 76, 102. Dyer 356. Bulstr. 2 Part, 213. Crook 1. 257.* But a Solicitor may sue for Money promised to him to sollicite a Suit. *Hob. Rep. Pl. 72. Dyer 356. Crook 1. 76.*

If I for Debt sue one to Outlawry after Judgment, and having taken out a *Cap. Ut legatum*, in Consideration that I will forbear upon it, one *J. S.* doth assume to me, That if the Defendant doth not pay it, he will; this Consideration is good, and not against Law, albeit it be at the King's Suit. *Crook 1. last Publish'd, 910.*

If one at the Request of *J. S.* promises to beat *J. B.* and *J. B.* doth promise to save him harmless, this is a void Consideration. But if one requests *J. S.* to enter into the Mannor of *Dale*, and drive out Cattle, and he will save him harmless that doth so; and after Trespass is brought, and Recovery had for it, he shall have his Action upon this Promise. So if a Sheriff pretending to have a Writ, but he hath none, arests one, and requests an Inn-keeper to retain him in his House, or hire one to conduct

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duct the Prisoner to Goal, and promises to save him harmless: This is a good Promise, and if either of them be sued for it, he may have his Remedy upon the Promise. So if a Sheriff hath arrested one upon a Commission of Rebellion from the Council of the North, and he prays an Inn-keeper to keep him a Night as a Prisoner, and he will save him harmless, and the Inn keeper is sued for it; he may have Remedy upon this Promise. *Hutton's Rep. 55.*

If the Original Contract be not usurious, no Matter *ex post Facto* will make it so. And therefore to take his Use before the End of the Year, where the Original Contract is not Usurious, will not make the Contract void. *Thursby's Case, Hill. 7 Jac. Ca. B. Brownl. 1 Part 73, 191. Bulstr. 1 Part 17.*

A Woman that hath a Husband, or a Man and his Wife, and a Third Person, cannot make an usurious Contract within the Statutes. *Trin. 13 Car. 1. B. R.*

If one lends Thirty Pounds for half a Year, to receive Three and Thirty Pounds, if the Son of the Obligee be alive, if not, Seven and Twenty Pounds; this is not Usurious. *Cook 5. 70.*

If one borrows a Hundred Pounds after the Rate of the Statute, and the Borrower doth after pay part of the Principal, and all the Use within the Year, and the Lender receives or sues for it within the Year; this is no Usury, for
no

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no Matter *ex post Facto* after the first Contract can make it so. *Hill. 7 Jac. B. R.*

If the Contract be, that the Borrower shall give such a Sum for the Loan, as comes to the Interest only; but he is to receive this Money for the Loan within Ten Days next following: This is a corrupt Contract. *Bulstr. Rep. 1. 20.*

It is not an unlawful Usury upon a Loan of Money for a Year, to agree and take his Interest Quarterly, or half-Yearly, so much as it comes to for the Time. But to take the Use at the beginning, or before the Time, for more Time than is past, is corrupt. *Crook 2. Part 26.*

The Case in effect was, *A.* was in Debt to me a Hundred Pounds, and he doth promise to me, that if I will forbear him half a Year, that he will pay me my Money and Interest for it, being then Five Pounds, and I sued for it in this Action upon the *Assumpsit*; and it was held by Justice *Dodderidge* and Justice *Haughton*, that the Contract was void, for Usury is against the Common Law. *Trin. 20 Jac. Sanderson's Case.* See *Cook 10. 102. Dyer 356.*

A Contract, that a Husbandman shall not plow his arable Land, is a Contract of this Nature, and void. So if one be ingaged by any such Promise not to appear upon any Jury, or not to serve in any Jury; this were unlawful and void, let the Consideration be what it will. *Bendl. Rep. 89, 90.*

If I arrest a Man, to the end he should engage himself to me for Money where none is due, and he being in Prison doth so; so that the Promise is made by *Dureffe* of Imprisonment; this is void. But an Engagement by a Prisoner for a due Debt to obtain his Liberty, is good. *Pasche*, 9 *Jac. B. R.* But if one threaten to Kill, Beat, Wound, or Imprison me, unless I will make such a Promise, and thereupon and for this Cause only I do it, let the Promise be made to him that doth threaten me, or to another, it is void, and the Action brought upon it may be avoided for this. But for this, see *Brook* 76. 18. 9 *H.* 7. 24. 39 *H.* 6. 5. *Brownl.* 2 *Part*, 276. But the threatening of me to Kill, Beat, Wound, or Imprison my Father, Mother, Child, Brother, Sister, or Friend, or the threatening of me to burn my House, enter upon my Land, or take away my Goods, will not make such a Contract void. 15 *H.* 6. 17. 11 *Ed.* 4. 13. 8 *H.* 6. 8. *Coo.* 2. 9. 21 *Ed.* 4. 13. 18 *H.* 6. 21. 7 *Ed.* 4. 21. 20 *Aff. Pl.* 14.

That a Promise to one, in Consideration he will be my Solicitor in several Suits I have depending against me, that I will give him as much for his Pains as he shall deserve; it seems this is not good. And that an Attorney or Counsellor who hath a Profession towards the Law, may sollicite any Suit in any Court, and it is not Maintenance; but otherwise it is of any other Person. *Hesley's Rep.* 129.

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If a Clergy-man pays the Bishop part of his First Fruits, and promises him the rest by a Day, but doth it not; it is said the Bishop can have no Action upon this Promise at Common Law; and yet if he hath any special temporal Damage by it, it seems there is as much Reason an Action should lie for this, as for calling one Adulterer, Bastard, or the like, *Cook on Lit.* 262. *B. Cook* 4, 16, 17. *Crook* 2. 473, 163.

If I have a *Cap. Utlegatum* against another, and I promise J. S. that if he will go to the Sheriff and procure a special Warrant and arrest the Defendant, that I will give him Forty Shillings; it is said this *Assumpsit* is void, by Statute 43 H. 6. *Noy's Rep.* 77.

Consideration a Duty.

If I have a Writ of Execution against me, and I assume to the Sheriff, that if he will arrest him and lay him in Gaol, I will save him harmless; it seems this is not a sufficient Consideration for it but his Office, and what he is bound to do. *Hesley's Rep.* 175, 176.

If I retain one as of my Council, or as an Attorney, and he doth promise me to follow my Suit, and doth it not, or doth it not faithfully and diligently, I may have this Action, albeit I give him nothing for it, for he is bound *ex Officio* to do it, albeit he doth not promise it. As if a Serjeant or Counsellor promises to plead for me in my Suit, and pleads amiss, or an Officer

Officer in a Court promises to do any Thing belonging to his Office, as a Clerk to inroll his Jury, or the like, and he doth it not, the Party hurt thereby may have this Action. 14 H. 6. 18.

Consideration Certain, or Uncertain, or Repugnant.

If one in Consideration, that I in a short Time will deliver him Two fat Oxen, he will in a short Time pay me Ten Pounds for the Oxen; this is not good. *Adjudged. Bulstr. 1. Part, 97.* So if I sell a Horse to another for so much as he shall value him; so if I sell a Horse for Ten Pounds, to be paid me *per Breve Tempus*; this is uncertain, and void. *Bulstr. 1 Part 92.*

A. doth promise to B. to discharge him and save him harmless from all Bonds in which he shall be bound for the Son of A. at the Request of the Son; B. sued, and shewed that he, as *Fidei Jussor*, was bound for the Son, &c. In this Case it was held a good Consideration, but that he ought to have shewed precisely the Request of the Son, and that to say as *Fidei Jussor*, is not sufficient. *Pasche, 9 Jac. B. R. Somerston's Case, Lib. Infra, 11. C. Sect. 1.*

Consideration

Consideration past.

A Consideration past, and executed without a Request, is not good; otherwise upon Request.

Ib. 1. P. 11. Q. usque 9. vide 18. 19, 20.

If a Consideration be not wholly past and executed according to Request or the Bargain, Contract, or Agreement, the Action lies upon a Promise subsequent to the Bargain, &c. when part of the Consideration is past. *Ib. 1. P. 12.*

Q. 9, 10, 11, 12.

The Continuance of a Debt is a good Consideration continuing. *Ib. 1. P. 12. Q. 13, 14, 15, 16, 21.*

If *B.* be found in Arrear 10 *l.* upon Account, promises that if he does not prove in a short Time that he has paid it to *J. S.* to the Use of the Plaintiff, he will pay it to the Plaintiff: In this Case, a short Time is intended a reasonable Time; but without that, an Action lies presently, for he is found in Arrear 10 *l.* and the Law makes a Promise to pay it, which shall stand good; tho' a further Time was given to him for his Advantage, and it be admitted that he did not allow reasonable Time.

Ib. 1 P. 23. V. 30.

A Consideration past before the Promise made, may be good, as where the Party promising is as much bound to the Thing before, as he is after his Promise: As where one is indebted to me before, and in Consideration thereof

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thereof promises to pay it to me. And where the Thing that is done, is done by the Procurement of him that makes the Promise, and he in Reason and Conscience is bound to do it; as where I have persuaded a Man to engage for me, or a Friend of mine, and after I promise him, in Consideration thereof, to save him harmless. *Crook* 1. 282. 295. And when the first Act is a Kindness, obliging him that promiseth; as that the Party, to whom the Promise is made, had, at the Request of another, granted the next Avoidance of a Church. *Crook* 1. 295.

A Promise to pay Money, which he ought to have paid according to the Agreement had between them: This is no more than a general *Indebitatus Assumpsit*, for it doth not appear that the Agreement was by Deed, or without Deed, not good. *Levinz* 2 Part, 152. *Wife against Wife*.

Indebitatus Assumpsit for 20 Pounds for a Reward upon a Policy of Insurance upon such a Ship, good, tho' he did not shew how the Reward came due; for it is as good as an *Indebitatus* for a certain Salary, which has been adjudged good. *Levinz* 2 Part, 153. *Fonke against Tinsacke*.

Indebitatus Assumpsit for Goods, implies *Vendit. & deliberat.* otherwise he was not indebted. *Levinz* 1 Part, 141. *Wright against Beal*.

Assumpsit

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Assumpsit, and declares upon the Custom of Merchants and others trading in *England*, That if a Man charges a Bill upon another, who accepts it, he is bound to pay it, and that J. S. charged a Bill upon the Defendant to pay to the Plaintiff, which he hath accepted and not paid, *Cumque etiam* the Defendant was in Debt to the Plaintiff upon another Bill of Exchange, and promis'd and hath not paid: After a general Verdict upon both Promises, and intire Damages, Judgment was stay'd, because no Custom was laid for warranting the second Promise, and without Custom an *Assumpsit* upon a Bill is not maintainable; and the Custom laid in the first Part does not extend to the second Part. *Lewinz* 1 Part 298. *Brown* against *London*. *Ventris* 1 Part 152. *Brown* against *London*.

Indebitatus Assumpsit, the Plaintiff declar'd, That the Defendant being indebted to him in a certain Sum *Pro diversis Mercimoniis ante tunc vendit. & deliberat. ad Requisitionem* of the Defendant to a Stranger, did promise to pay, &c. After Verdict for the Plaintiff it was mov'd in arrest of Judgment, that this was but a Collateral Promise, and that no *Indebitatus Assumpsit* would lie, for the Debt was from the Person to whom the Goods were sold. *Wild* and *Jowrs* held the Action well brought, and cited an Action *Sur Indebitatus Assumpsit* lately in the Court of *King's-Bench* against one for Money promis'd in Marriage with his Sister. *Vide R.*

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120. & 122. But *Rainsford*, Chief Justice, *contra*; but the Plaintiff had Judgment. *Ventris* 1 Part, 311. *Kent* against *Darby*.

If an *Indebitatus Assumpsit*, a Man promises, in Consideration that one (to whom the Promise was made) would marry his Kinswoman, he would give her 100*l*. It was adjudged, that an *Indebitatus* will not lie; for 'tis not a Debt, but a Collateral Promise. *Ventris* 1 Part 268. *Anonymous*.

If a Man be indebted to me, and promises to pay me this Debt such a Day; in some Cases I may have this Action upon such a Promise. But in such Actions as this, the Cause of the first Debt, as for Wares, Herbage, or upon a Promise, or the like, is to be set forth in the Declaration. And therefore to say, in Consideration that the Defendant was indebted to him without more, he promis'd him Payment at a Day certain, is not a good Declaration: For it may be, the first Debt was upon a Record, or for Rent upon a Lease for Years, or upon an Obligation, and then no Action will lie upon the Promise. *Bulstr.* 1 Part 67. *Crook* 1 Part 3. 21. *Crook* 2 Part 206, 207, 548.

And if in the last Case it be pleaded to, and tried for the Plaintiff, yet this will not make it good, but it is avoidable for Error. *Adjudged. Pasche*, 2 Car. 1. Co. B. *Foster's Case*. And yet if one promises me, in Consideration that I will forbear a Rent due to me by Record, or for Rent on a Lease for Years, that he will pay

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pay me such a Day; this is a good Consideration and Promise. 14 Jac. B. R. Sir George Marshall's Case, *Adjudged. Hill. 9 Car. 1. B. R. Bret and Heath's Case.* See more Chap. 13. and in this Chap. *Hob. Pl. 32. Cook 10. 77. Crook 1. last Publish'd, 242.*

A. brought an *Assumpsit* against B. and declar'd, That whereas B. had feloniously slain one P. M. The Defendant after this requir'd the Plaintiff to endeavour to get his Pardon, which he did thereupon labour and obtain: And that afterwards the Defendant, in Consideration thereof, promis'd him a Hundred Pounds. And for this he brought his Action, and the Declaration was held good. *Hob. Rep. 147.*

If one boards with me a Quarter of a Year, and after J. S. intreats me that she may board with me a Year longer, and after, before the Year expired, J. S. doth promise me that he will pay me for the Year, and for the Quarter behind as much as it shall be worth: In this Cause, because part of the Consideration is executory, and all is not executed, this will be good, and I shall recover of him for the Year, and for the Quarter both. *Adjudged. Trin. 14 Jac. B. R. Cotton and Westlicot.*

If one promises me, in Consideration that I was bound for him for a Debt, and paid the Money, that he will pay me my Money again such a Day; this is a good Consideration. *Crook P. 2. 18.* The Plaintiff laid his Action, That the Defendant requested him to give his Credit to
J. S.

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J. S. for Fifty Pounds for Wine, and that upon this he gave his Bond for it, and had paid it upon a Suit, and having acquainted the Defendant with it, he promis'd in Consideration thereof to pay it; this was adjudged a good Consideration. *Crook 2 Part 18. Telverton 45. See Crook 1. last Publish'd.*

One in Consideration that I have paid for him at his Request Ten Pounds to C. at such a Day, which was a Year before the Promise, he doth assume to repay it, *cum inde Requisitus esset*; this is a good Consideration. *Crook 1. last Publish'd, 282.* And it is given as a Rule, That if a Marriage or Engagement be by another by Suretyship, or the like, and this is done at my Request; and after it is done I be told of it, and I do then in Consideration thereof promise to give Money, or do something in lieu thereof: This shall be a good Consideration to give Life to the Promise, albeit it be past. *Telverton 45.* And,

If I have any Hand in the first Contract, I shall be chargeable, as in Loan of Money or Goods. If I say before, or at the Time, If he pay you not, I will; or, I pray let him have them, and then I after promise Payment. But if one be in a Shop buying Wares, and after it is done, I say to the Seller, If he doth not pay you, I will. So of Money borrowed; this Promise will not bind. *Bulstr. 1 Part, 120, 121.*

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If my Servant be arrested in *London*, and Two of my Friends, without any Privy, become Bail for him; and after I do promise them, for their Friendship, to save them harmless from all Damage and Costs, &c. If they be after charged with the Debt, by this they cannot have this Action against me: But if I had requested this of them before, and assumed after, perhaps it may be otherwise. As if I, in Consideration that you have married my Daughter at my Request; say, I will give you Twenty Pounds; this is a good Consideration and Promise. *Dyer 272. 12 H. 8. 112. Jac. B. Brook 106. Crook 1. 295.* But if I say to B. I become Debtor to you for the Debt of J. S. this is *Nudum Pactum*. *Dyer 20. Pl. 131.* And yet if I sell Goods and have not deliver'd them, and another promises to me, so I will deliver the Goods, to pay the Money; it seems this is a good Consideration, and that an Action will lie. *12 H. 8. 11.*

In *Mich. 37 & 38 Eliz. Co. B.* between *Jenny* and *Goochman*, it was adjudged, that if one declare, That he in Consideration *Quod deliberasset & dedisset* to the Defendant Twenty Sheep, he assumed, &c. that this was not good, for that it was past. And *Pasche, 8 Jac. Co. B.* one declared, That in Consideration that he had sold to him a Horse, he promiseth to pay him; it was adjudged naught. *Mary Andrews Case.*

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If *A.* promises to *B.* that in Consideration that *B.* hath lent him an Hundred Pounds at a Day past, that he will pay it to him; this was doubted. *Hill. 44 Eliz. Co. B. Dogget and Bowill.* But agreed by all the Judges, *Mich. 11 Car. 1. B. R.* That if he had laid a Request, and the Case had been so, that the Action had lain. But if a Man of his own Head and Courtesie will do a Thing for me, I cannot have an Action for this. But if one be about to buy Goods, or borrow Money of me, and another before the Sale or Loan tell me, That if the Buyer or Borrower do not pay me, he will; or if he bids me deliver the Things, and if the Buyer pays me not, he will pay me upon Request; these are good Considerations. But otherwise it is where the Promise comes after the Borrowing or Buying. *12 H. 8. 12. 44 Ed. 3. 21.* But in these and such-like Cases, there must be a Demand of the Debt by me before I bring my Action: One in Consideration that I have sojourned him at his Request, and will sojourn him a Year, doth after promise me Twenty Pounds; this is good for all, for here is a Time to come. *Adjudged. Trin. 14 Jac. B. R. Cotten and West.*

If *A. B.* in Consideration that I have sealed a Release of a Debt to him due from *J. S.* upon the Request of *A. B.* promises to pay me the Money if *J. S.* do not; it is said to be resolved that this Consideration is good, albeit it be past. So because I was Bail for his Servant,
that

that he will save me harmless: So because I have at his Request granted to him the next Avoidance of a Church: It is said, these are good Considerations. *Crook 1 Part 296. Dyer 372.*

It was agreed in *Rainsford's Case*, 28 *Eliz. B. R.* That if *A.* requested *B.* to heal a poor Man, and after he is healed, *A.* promises to *B.* that in Consideration that he did it at his Request he will give him Ten Pounds; that this is a good *Assumpsit*.

The Plaintiff declared, That whereas he had bought of the Defendant Three Parcels of Land 10 *Decembris*, afterwards 19 *Decembris* assumed to make him a good Assurance thereof before such a Day, and it was adjudged good, and for the Plaintiff. *Crook 1. last Publish'd, 138.*

If I sell Cheese to the Son of *J. S.* and the Father prays me to deliver the Cheese to his Son, and assumes that if his Son do not pay me for it, he will; this is a good Consideration and Promise, on which I may have this Action. *Crook 1. last Publish'd, 700.*

If I promise to another, that in Consideration he hath at my Request, by his Deed, given and granted to me the first and next Avoidance of the Church of *B.* assumed to pay me One Hundred Pounds; this is a good Consideration and Promise, on which I may have Action. *Crook 1. last Publish'd, 715.*

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If one, in Consideration that I will sell him Three Cows for Ten Pounds, promises to pay me the Ten Pounds at *Easter* following, and if he fail, that he will pay me One Hundred Pounds upon Request; this is a good Consideration for the Recovery of the Hundred Pounds. *Crook 1. last Publish'd, 747.*

If one becomes Bail for my Servant, and after it is done, I promise to save him harmless; no Action will lie upon this. *Survey of the Law, 94.*

A. sued and set forth, That he sold a Horse to *B.* such a Day, Year and Place, to be paid at a Day to come, and that the Defendant, *Ad tunc & ibidem ratione Premissorum*, assumed to pay the Money, if, &c. this is not good; for the Contract, and giving of a Day to *B.* was not *ad instantiam* of the Defendant, but completed before. *Pasche, 9 Jac. B. R. Farmer and Field. Survey of the Law, 97.*

And yet one did declare, That in Consideration that he had sold a Horse to him, that he would pay him Five Pounds; and this it's said was adjudged good in the *Exchequer Chamber*, albeit it did imply Time past. *Pasche, 8 Jac. Co. B. Mary Andrews Case. (A. B.)*

One declar'd, That *J. S. emisset Equum* at such a Price, and the Defendant *Ad tunc & ibidem ratione Premissorum* did assume to pay the Money, and it was adjudg'd naught; for the Sale was before the Consideration. *Pasche, 9 Jac. B. R. Farmer's Case.*

If

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If one promises, that in Consideration I was bound for him for a Debt, that he will pay me such a Day; this is good. *Creek, Part 2. 18.*

It is said to be the Lord Grey's Case, 9 *Eliz.* His Father was indebted to divers Merchants upon simple Contracts, and died seized of divers Lands which descended to his Son and Heir in Fee; the Creditors demanded the Debt of the Heir, who answer'd to them, If my Father were indebted to you, I will pay it; and upon that Promise an Action was adjudged to lie, altho' the Heir by Law were not chargeable.

If I request another to do a Thing for me, and make him no Promise, and after he tells me he hath done it, and then I promise to pay him for it; this is a good Promise and Consideration, although the Promise go not with the Request. Otherwise it is where a Man doth me a Courtesie without any Request. *Brownl. and Gouldsb. 8.*

If I make a Lease to *A.* for Years, and after request *A.* to grant it for Years to *B.* and promise something for this at the Time, or before the Grant, there it may be good; but if it be made after the Grant, it is no good Consideration. *Godb. Rep Pl. 19.*

If I be bound in an Obligation to pay another Fifty Pounds on a Day to come, and afterwards after the same is due, in Consideration that I, at his Request, will pay unto one *Playford*, to his Use, Fifty Pounds upon the

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Tenth Day of *December* following; in Satisfaction of the said Debt, he doth assume and promise to me to deliver up the same Obligation to me when he shall be thereunto requested, to be cancell'd; this is a good Consideration and Promise: But in an Action brought upon it, there must be a special Request averred, or it will not lie. *Bulstr.* 3. 298.

If I have deliver'd to one Clothes for so much on a Bargain; and after, he in Consideration of this Debt promises to pay it me a Year hence; it is said to be adjudged good. *Bulstr.* 1. 85.

If the first Husband of a Woman puts his Son to table with me for Three Years, and agrees with me to give for every Year Eight Pounds, and dies within the Year: After, the Woman, in Consideration of her natural Affection to her Son, and in Consideration that the Son may continue with me during the Residue of the Three Years, promiseth to pay me Six Pounds Thirteen Shillings and Four Pence for the Tabling of her Son for the Time past, and Eight Pounds for every Year after he shall continue with me; this is a good Consideration and Promise, and I may recover the whole Debt formerly and after due by this Action. *Crook* 1. last Publish'd, 755, 756.

If one the Eighth of *May* deliver'd me Ten Pounds, and I the Ninth of *May*, in Consideration hereof, promised to pay him the Ten Pounds; this is no good Consideration. But
if

if it were at the same Time, it were good. *Mich.* 42, 43 *Eliz.* *Pilsworth's Case*. And yet if I sell all my Lands, or all my Goods, and nothing is appointed by the Agreement what I shall have for it; it is said, this is a good Contract, and I may sue for the Worth for it. *Crook* 1. *last Publish'd*, 42.

The Plaintiff declar'd, That he the Tenth of November, 12 *Jac.* sold to the Defendant divers Goods for Ten Pounds; and that the Defendant *sic Indebitatus existens postea*, (*scilicet*) *ultimo die Novembris*, did promise that in Consideration *inde* he would pay to the Plaintiff this Money at *Christide*; and the Plaintiff brought this Action upon the last *Assumpsit*, and the Court inclined to this Opinion, that it was good, and that he might sue upon the first or second Contract at his Election, but not upon both, *Election*. for here is a Consideration continuing. *Hodge and Vavisor*, *Trin.* 14 *Jac.* *B. R.* And there it was said, That this Case was not like to that of *Seek and Pilsworth*, 42 & 43 *Eliz.* *B. R.* Where Two exchange one with another so much Silver for so much Gold; and after, in Consideration thereof, one of them promises, &c. *Et* in this Case of *Hodges*, Justice *Haughton* held, That *Indebitatus existens pro Merchandizis Ventitis*, is a good Consideration; and therein *Hodges Case* is a Consideration implied Forbearance till *Christide*.

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If *A.* be indebted to me, and in Consideration thereof, that I will give him Time of Payment till the first Day of *Easter Term*, promises Payment; this is good: But if I sue upon it, I must shew how the Debt accrewed. For generally *Indebitatus* is not sufficient, when it is the Ground of the Action; but where it is but an Inducement to the Action, as here before, they being agreed upon the Debt, and it being but a Collateral Promise, it is good enough without shewing how. *Crook* 2. 548.

Where the Plaintiff *J. S. emissit Equum* at such a Price, and the Defendant *ad tunc & ibidem ratione Præmissorum*, did assume to pay the Money; this was adjudged to be naught, for the Sale did precede the Consideration. *Pasche, 9 Jac. Farmer's Case. B. R.* And where the Plaintiff declar'd, *quod cum*, the Defendant was indebted to the Plaintiff Twenty Pounds for Meat, Drink and Lodging for himself and Two others, that he did such a Day assume to pay it to him; that this was not good. *Curia. Seedman's Case.*

If one, in Consideration that his Son will pay him such a Debt, promises him that the Land shall descend to him; this is a good Consideration and Promise. *Bulstr. 2 Part 18, 19.*

If one in Consideration that I will pay Two and Fifty Pounds Fourteen Shillings to his Ute such a Day, *&c.* to one *Playford*, to whom he oweth so much, promises to deliver me my Bond, in which I am bound for the Money to him
when

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when he shall be thereunto requested; this is good: But a special Request must be, and be pleaded in the Case. *Popham Rep.* 160.

Consideration Executory.

If one upon Account promises to pay the Arrearages, it is a good Consideration, not executed, for the Debt is uncertain before the Account. *Rolls Abr.* 1 P. 12. Q. 17.

If the Consideration of a Promise be Executory, it must be duly and fully executed and perform'd before the Action can be brought. And therefore, if one promises to me Ten Pounds to help to gather his Tythe, Hay and Corn, and I help him to gather his Corn only, and not his Hay also, I cannot recover the Ten Pounds in this Suit. *Mich. 7 Jac. B. R.* 9 H. 7. 13. *Survey of the Law*, 89, 91. But if he hath no Tythe-Hay to gather, it is good enough.

Consideration partly Executed, or partly Executory.

If one hath sojourn'd with me half a Year, and then I am desir'd by her, or a Friend of hers, to let her sojourn with me another half Year, and promises to pay me then for the whole Year past and to come; this is a good Consideration to raise the Action to recover for the whole Year. *Bulstr.* 3. 187.

Consideration

Consideration how to be taken, and must be perform'd.

Put your Daughter to School, and I will pay for her for a Year; he puts her to School for Three Quarters of a Year. It shall be intended I will pay for a Year or less *secundum Ratum* as she stays.. *Levinz 1 Part 140. Keyme against Goulston.*

Consideration pursued.

If one promises to me, in Consideration that I will seal a Release to J. S. he will pay me Ten Pounds, and after, at his Request, I seal the Release to J. D. and not to J. S. In this Case, I cannot bring the Action for the Money, because I have not pursued the Consideration. *Trin. 4 Jac. B. R. Cranfield and Green. Crook 3.*

If one promises me Three Shillings a Week for his Diet and Lodging, and I find him Diet but not Lodging; in this Case I may not sue for the Three Shillings a Week upon this Contract, but so much as I deserve for the Diet and Lodging. *9 Ed. 1. Crook 2.*

If one says to another, make me a Lease for One and Twenty Years, and I will give you a Horse, and he makes me a Lease for Threescore Years; this is not sufficient, albeit it be better,

better, because he hath not precisely pursued the Agreement. So if one says, go and do such a Business at *Tork*, and I will give you Forty Shillings, and he afterwards hearing that he dwelt some few Miles on this side *Tork*, saith to him, Do this Business for me at your House, and this shall suffice; yet this notwithstanding, if he goes not to *Tork* and doth this Work there, he can never have the Forty Shillings. *Bulstr.* 3. 222, 35.

If the Consideration be to lend me Ten Pounds for a Year; to lend some of it for a Year, and some of it for less than a Year, will not be a Performance. And if the Consideration be to pay one Ten Pounds in Gold, and he pays it in Silver; this is not sufficient. *Telverton's Rep.* 87.

If it be to be paid in Gold, Payment in Silver is not a Performance, nor will the Acceptance of it by the other amend the Matter. *Telverton* 87.

Mutual Consideration.

The Consideration is good for the Hazard, and also for the mutual Consideration, altho' Tables is not a lawful Game. *Rolls Abr.* 1 P. 17. T. 7. 1 P. 28. H. 59.

If one, in Consideration of Ten Shillings by me given to him, promises to pay me Ten Pounds, if he doth not prove that I had a Child by such a Woman; This Contract may be good enough,

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enough, and the Proof may be in the Action brought upon the *Assumpsit*: And it seems it may be done at any Time during his Life. *Bendl. 139. 10 Ed. 4.*

Consideration of Marriage.

A Promise of Marriage is a good Consideration; for Marriage is a Preferment, and the Loss of it is a Temporal Loss. *Syderfin 1. 180. Hebden against Rutter.*

In Consideration that *A.* hath promis'd to marry *B. B.* promis'd to marry *A.* This is good, for the mutual Consideration. *Syderfin 1. 180. Hebden against Rutter.*

If one did assume to my Wife in her Widdowhood, that if she would marry *Thomas Mason*, he would pay her Yearly after his Death, during her Life, Forty Shillings; if she did marry him, a good Action lies for this Forty Shillings a Year. *Crook 2. 222.*

If one promises to me, a Woman, that if I marry his Kinsman, and out-live him, that he will pay me Twenty Pounds, and I do marry and out-live him; I may have this Action. *Hob. Rep. Pl. 179.*

If one, in Consideration of Marriage, doth promise to me Twenty Pounds, *viz.* Ten Pounds at *Michaelmas*, 1631, and Ten Pounds at *Michaelmas*, 1632; this is good, and the Action will lie for Non-payment the first Day, but
Debt

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Debt will not lie till both the Days be past.
Crook 1. 175.

Consideration Collateral or Pursuant.

Where in an Action upon the Case upon *Assumpsit* Two Considerations or more are laid in the Declaration, but they are not Collateral, but Pursuant. As *A.* is indebted to *B.* a Hundred Pounds, and *A.* promiseth to *B.* that in Consideration he oweth him a Hundred Pounds, and in Consideration that *B.* shall give to *A.* Two Shillings, that he will pay to him the said Hundred Pounds at such a Day. If *B.* brings an Action upon the Case upon this *Assumpsit*, and declares upon these Two Promises, altho' the Consideration of Two Shillings be not perform'd, yet the Action doth well lie. But if they be Collateral Considerations which are not pursuant; as if I, in Consideration that you are of my Council, and shall ride with me to *Tork*, promise to give to you Twenty Pounds; in this Case all the Considerations ought to be prov'd, otherwise this Action will not be maintainable. *Leonard's Rep.* 405.

Consideration continuing.

It was collaterally admitted by Council, in *Crook* 3. 409. *Townesend* against *Hunt*, that the Consideration of marrying his Daughter or Cousin,

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Cousin, which is a Gift in Frank-Marriage, is a Consideration continuing.

Consideration good or valuable.

Assumpsit does not lie without a good Consideration.

A Promise without a Consideration, sounds merely in Covenant, and is *Nudum Pactum*. *Rolls Abr.* 1 P. 9. P. 1.

The Consideration of Money deliver'd to him by an Infant with his own Hands (the Delivery by the Hands of another is void, but with his own Hands is only voidable) upon an *Assumpsit* to build him an House, is not good; but upon an *Assumpsit* to deliver to him an Horse, is good. *Ib.* 1. P. 19. V. 4.

In Consideration that the Plaintiff, an Infant, would suffer him to take away so much of the Plaintiff's Grass, he promis'd to pay him so much for it. Resolv'd, That tho' the Infant may avoid the Agreement; yet it is a good Consideration. *Modern Reports*, 25. *Smith against Bower*.

A Consideration that A. shall make an End of all Matters against him in *Chancery*, is good. *Rolls Abr.* 1 P. 19. V. 5.

A Consideration to forbear to prosecute any more a Writ of Privilege, is good. *Ib.* 1. P. 19. V. 6.

A Consideration to deliver the Clokes or Goods of A. whether they are in Pawn or not,

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to a Stranger, which he retains for a Debt of *A.* upon an *Assumpsit* by the Stranger to pay the Debt, is good. *Ib.* 1. *P.* 19. *V.* 7, 8.

It is a good Consideration if the Mother of *B.* consents to the Marriage of *B.* her Daughter, and *B.*'s being Heir Apparent to her Father doth not alter the Case. *Ib.* 1 *P.* 19. *V.* 9.

It is a good Consideration if a Mother permit her Son to serve one for such a Time upon Request, tho' the Son be of the Age of Fifty Years. *Ib.* 1 *P.* 20. *V.* 10.

If *B.* be indebted to *A.* and *C.* indebted to *B.* by a Statute, and *B.* delivers the Statute of *C.* to *A.* for Security of his Debt, but without my Assignment of the Statute or Letter of Attorney to sue the Statute; and afterwards *B.* dies, and *D.* pretending to be Executor to *B.* promises *A.* That in Consideration *A.* will deliver the said Statute to him, that he himself will pay to him the said Debt, which was due to him from *B.* Tho' it does not appear that *D.* has any Benefit by this Statute, in as much as it does not appear that he is Executor; yet for as much as he pretends to be Executor, and the Statute was in the Power of *A.* so as he could have had it cancel'd, it is a good Consideration. *Ib.* 1 *P.* 20. *V.* 13.

It is a good Consideration if one of the Obligors pays the whole upon the Promise of the other Obligor to repay the Moiety. *Ib.* 1 *P.* 20. *V.* 13.

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It is a good Consideration if one of the Obligors pays the Debt, tho' it be after Judgment or Execurion, upon his Promise that he will not proceed in the Suit; for it is a good Consideration for the Obligee to have the Money in his Pocket, it being before only a Chose, (*i. e.*) a Thing in Action. *Ib.* 1 P. 21. V. 17. For it may be Charge and Trouble to the Obligee in serving the Execution to get the Money. *Ib.* 1 P. 28. V. 55.

It is a good Consideration, if the Creditor of the Testator will permit Letters of Administration during the Minority, to be granted to the Mother of the Infant; for it is a good Consideration to redeem from Vexation; for what Remedy can the Mother have, if the Ordinary does not grant it? *Ib.* 1 P. 21. V. 18.

It is a good Consideration, if the Wife of the Seller will not hinder the Bargain, and the Vendor, (*i. e.*) the Seller and his Wife, may have an Action. *Ib.* 1 P. 21. V. 19. 1 P. 32. Z. 12.

It is a good Consideration to deliver Bills of Exchange to the Person to whom they were directed upon his Promise to pay the Money, for the Delivery may be a Prejudice. *Ib.* 1 P. 22. V. 21.

It is a good Consideration to permit B. to hold the Land then in the Occupation of B. upon Promise to pay 13 *l.* for Rent at *Michaelmas*, and to deliver the Possession, tho' it does not appear that the Plaintiff had any Estate in the
the

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the Land at the Time of the Promise. *Ib.* 1 *P.* 22.
V. 22.

It is a good Consideration to pay the Money mention'd in the Condition after the Bond is forfeited, upon a Promise to deliver the Bond; tho' legally, after the Obligation forfeited, 30 *l.* cannot be a Satisfaction for 60 *l.* *Ib.* 1 *P.* 22.

V. 24.

It is not a good Consideration to surrender an Estate at Will upon the Promise of the Lessor. A Term, without shewing what Term, shall be taken at Will. *Rolls Abr.* 1 *P.* 23.
V. 27. But in this Case, if it had been alledged, that there was a Controversie between the Lessor and Lessee, whether it was a Lease at Will or for Years, and upon that the Promise had been made as before; this had been a good Consideration. *Ib.* 1 *P.* 23. *V.* 28.

It is not a good Consideration to make an Estate at Will. *Ib.* 1 *P.* 23. *V.* 29.

It is a good Consideration, if one of the Obligors being invited by the Executor of the other Obligor, pays one half of the Reckoning upon the Promise of the same Executor of the same other Obligor, being the principal Obligor, to pay the Money due upon the Bond: For tho' the Host does not know that he was invited, and tho' he was not invited in reality, upon which both were bound equally; yet if one of them departs without Payment, the Host may compell the other to pay the whole before he goes, and so a Benefit by the

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Payment

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Payment of half. Also when a Debt is due jointly from Two, it is a good Consideration, that if the other will pay one Moiety, he will discharge the other of a Bond of Ten Pounds; for upon the Default or Non-appearance of the other, he may be compell'd to pay the whole. *Ib.* 1 P. 24. V. 31. A Benefit is a good Consideration, tho' it be but a small one.

The Delivery of 100*l.* is not a good Consideration upon a Promise to re-deliver it *in Specie* at a Day afterwards, for that the Defendant cannot have any Benefit thereby; but otherwise if the Promise be to re-deliver in Value: These Words (the same 100*l.*) shall be intended in Value. *Ib.* 1 P. 25. V. 35.

But the Delivery of any other Thing, tho' by a Person to whom the Thing does not belong, as of an Instrument containing an Inquisition; it is a good Consideration upon a Promise to re-deliver it. *scil.* *in Specie.* *Ib.* 1 P. 25. V. 37.

Acceptance of a Lease at a certain Rent, is a good Consideration upon a Promise to dress the Meat, &c. of the Plaintiff. *Ib.* 1 P. 25. V. 38.

It is not a good Consideration to relinquish a void Promise made to him, upon a Promise to pay 10*l.* *Ib.* 1 P. 26. V. 39.

It is not a good Consideration, that the Sheriff shall execute the Execution upon such Goods shewn to him by the Plaintiff, upon a Promise

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Promise by the Plaintiff to save the Sheriff harmless, for that the Sheriff ought to take Notice of them at his Peril. *Ib.* 1 P. 26. V. 40.

It is a good Consideration not to sue an Attachment out of *Chancery* upon a Decree, upon a Promise to pay 10 *l.* for thereby he does avoid the Imprisonment of his Body. *Ib.* 1 P. 26. V. 43.

A Submission to Arbitration; such Matters, &c. is a good Consideration, tho' he might presently revoke it, upon a Promise not to trouble him concerning the Right of Executorship. *Ib.* 1 P. 27. V. 48.

If *A.* delivers to *B.* to pay to *C.* and *B.* promises to pay it to him, there is no Consideration between *A.* and *B.* *Ib.* 27. V. 51. But it is a good Consideration if he had given a Day to pay it. *Ib.* 1 P. 27. V. 52.

The Payment of 4 *l.* is a good Consideration; upon a Promise to discharge him of 7 *l.* recover'd by Action. *Ib.* 1 P. 28. V. 54.

If *A.* be indebted to *B.* in 20 *l.* and *A.* comes to *C.* and intreats him to pay the said 20 *l.* to *B.* and if he will, he promises to repay the said Sum to him again, upon which, *C.* promises to pay the said 20 *l.* to *B.* and afterwards does not pay it, an Action lies for *A.* against *C.* for it is a good Consideration; for tho' he shall have no Benefit by it, yet there was a mutual *Assumpsit*, and so he shall have no Prejudice. *Ib.* 1 P. 29. V. 61. *dubatur.*

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It is a good Consideration to procure another to make Oath before a Master in *Chancery*, tho' he has no Power to take such an Oath; for the Trouble of Attendance to make the Oath, is a sufficient Consideration. *Syderfin*, 2. 123. *Perkins* against *Binke*. *Syderfin* 1. 283. *Brett* against *Prettiman*. For it is Matter of Conscience.

A. is indebted to *B.* in a Hundred Pounds, and by a fraudulent Deed gives all his Goods to his Son; *scil.* the Son of *A.* *A.* dies, and upon hearing of a Discourse of a fraudulent Deed made, the Son promises *B.* upon Consideration that he will deliver the Bond to him, and will give him an Acquittance and Discharge of this Debt, he will pay 100*l.* The Consideration is good, and it shall be intended that he was liable, or at least that the Discharge shall be made to the Party that was liable; for he promises to make a Discharge of the Debt, and that shall be intended to the Party that was liable to the Payment, or otherwise it shall be no Discharge. *Syderfin*, 1. 31.

A Promise by an Infant to give or pay Silver, is a good Consideration, tho' the Silver was not paid, for it is only in the Election of the Party to whom, &c. *Syderfin*. 1. 41. *Forester's* Case.

It is a good Consideration to prove the Debt, upon a Promise by a Stranger to pay it, for it is

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a Trouble to prove it. *Syderfin*, 1. 5, 7. *Traver* against—

A Consideration for the Reversioner, tho' the present Estate be in the Executors of his Lessee to deliver the Keys of the House, (*i. e.*) The Possession of one that only pretends Interest under the Lessee, upon his Promise to pay the Arrears of the Rent, and all that the Lessee ought to have paid, and that he will become a Tenant according to the Indenture, is good, tho' the *Assumpsit* is to pay a Rent. *Syderfin*, 1. 323. *Chapman* against *Southwick*.

It is a good Consideration to shew what was due from the Party that was dead, upon a Promise of a Stranger to pay the Debt; therefore if it be upon the Promise of an Administrator, the Plaintiff ought not to averr that the Administrator hath Assets. *Syderfin*, 369. *Loo* against *Burdoux*.

It is a good Consideration for a Vicar to preach to the People of the same Parish; for tho' he be Vicar, he is not bound to preach. *Syderfin*, 1. 409. *Taylor* against *Gay*.

It is not a good Consideration, that *multa Beneficia intulit ad Defendentem*. *Syderfin*, 1. 413. *Cluffe* against *Moor*.

Pro Opere suo Facto, vel pro Labore suo Facto, is a good Consideration after Verdict; for it shall be presumed, that there was such Work or Labour done in Evidence, which implies a Consideration, otherwise the Plaintiff shall be nonsuited. *Syderfin*, 1. 425. *Russell* against *Collins*.

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For Wares sold to the Wife for the Use of the Husband, is good. *Sydersin*, 1. 425. *Dyer* against *East*.

It is a good Consideration to accept 12 l. of a Stranger, in discharge of all Reckonings and Accounts between the Plaintiff and B. in order to which the Plaintiff makes a general Acquittance to the Use of B. upon the Promise of the Stranger, to procure B. to make a general Acquittance to the Plaintiff. *Crook* 3. 19. *Farret* against *English*.

J. S. being indebted to the Plaintiff, and the Defendant to J. S. the Debt, promises, That if he would procure an Order from J. S. he would pay him: The procuring the Order at the Defendant's Request by the Plaintiff is a sufficient Consideration, whether the Defendant were indebted to J. S. or not. *Ventris*, 2 Part 71. *Bockenham* against *Thacker*.

Multum & gratissimum Servitium, is a sufficient Consideration after a Verdict, for the Court must intend, that the Plaintiff gave in Evidence something that he did, otherwise the Jury would have given no Damages; but *multa Beneficia* is no Consideration: And entire Damages being given for both, Judgment was arrested. *Ventris*, 1 Part 27. *More* against *Lewis*.

A Consideration *pro Opere*, or *Labore*, or *Servitio*, is good after a Verdict. *Ventris*, 1 Part 44. *Rushden* against *Collins*.

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An Infant may make a Consideration whereon to ground an *Assumpsit*; he brought an *Assumpsit* by his Guardian, and declar'd, That whereas the Defendant enter'd into his Close and cut his Grass, in Consideration that he would permit him to make it Hay and carry it away, he promis'd to give him 6 *l.* for it. Upon this Declaration the Defendant demurr'd, supposing it to be no Consideration, for the Infant was not bound by the Permission, but might sue him notwithstanding. But the Court gave Judgment for the Plaintiff. *Ventris, 1 Part 51.*

Anonymus,

The Plaintiff pretending Title to certain Goods in the Custody of *S. T.* and claiming them to be his own, and intending to remove them; the Defendant, in Consideration that he would suffer them to continue there, assumed to see them forth-coming, and that they should not be imbezell'd, but safely kept to the Use of the Plaintiff; and shews, That afterwards the Goods were eloigned, &c. It must be intended that he prov'd the Goods were his own, or the Jury would not have found for him. *Ventris, 1 Part 211. Evans, &c.*

If the Plaintiff shall convey to the Defendant all his Estate in such Land, in such manner as the Defendant shall request, the Defendant promised to pay him Fifty Pounds; and the Plaintiff saith, That he was always ready to convey, but the Defendant did not request. The Defendant pleads, That the Plaintiff had no

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Estate, the Plea is not good; for the Bargain was to convey such an Estate as he had, and he might have a Right extinguishable by Release, tho' he had no Estate, and therefore a good Consideration. *Levinz, 2 Part 33. Woolnough and Uxor against Virdon.*

In Consideration that the Bishop would absolve the Mother of the Defendant, at the Request of the Defendant, of an Excommunication, for not paying her Tax towards the repairing her Parish Church, the Defendant promis'd to pay the Money to the Church-Wardens. This Consideration is good, for the Mother had Benefit by the Absolution. *Levinz, 2 Part 119. Corny and Curtis against Collingwood. Ventris, 1 Part 297. Curtis & al. against Collingwood.*

Where Two were bargaining for a Horse, the Defendant promis'd, That if they agreed on the Price, he would pay the Money: The Plaintiff saith, That he agreed for so much; It shall be intended after Verdict, that upon the Agreement the Horse was deliver'd, and the Promise the Inducement thereunto. *Levinz, 1 Part 103. Foster against Holyman.*

Assumpsit by a Clerk to the Treasurer of the Navy, to the Plaintiff who was possess'd of several Tickets for Seamens Wages due to them, if he would not further trouble his Master about the Payment, he himself would pay them to the Plaintiff. After Verdict it shall be intended, that the Plaintiff had either Interest in
the

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the Bills by Assignment, or Authority from the Seamen to receive the Money; and since the Clerk was order'd by his Master to pay them, his Intent was, That they should go no more to his Master for the Money, to discover that he has not paid it according to his Master's Order. *Levinz, 1 Part 257. Bolton against Fenn.*

Release of an equitable Interest, is a good Consideration. *Levinz, 1 Part 273. Wells Executor of Wells, against Wells.*

If there be nothing of Profit, nor Appearance of Profit on the one Side, nor of Appearance of Burthen nor Charge to the other Side; as where the Consideration is only to deliver a Man to his own Writings, or to pay him his own Debt after it is due, to deliver him his Bond when he hath paid the Money upon it, to deliver Goods only to deliver them over to another, or the like: These Considerations are not good, and therefore when they are the Causes or Motives of the *Assumpsits*, they are void, and no Action will arise upon them. *Crook 1. last Publish'd, 194, 380.*

If one, in Consideration I will let him have Goods of his out of my House, promise any Thing: This is a good Consideration to make good the Promise. *Cook 2. 502.*

If I be bound in Obligation to *J. S.* to pay Money at a Day, and he promises me, if I pay the Money at a Day, he will deliver me up my Bill; this is a good Promise and Consideration on
whic 1

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which I may have an Action if I pay the Money. But if one have forfeited a Bill, and Three Days after the Obligee promises to the Obligor, that if he will pay him his Money Three Days after, he will deliver the Bill to him; it seems this is not a good Consideration. If I buy and pay for Cattle of one in a Market, and he keepeth my Cattle and will not deliver them; and I, in Consideration that he will deliver them, promise to pay him a certain Sum of Money; he may have an Action for this. If a Man be to pay me Money the First of May, and that Day in the Morning I come to him, and pray him to pay it in the Morning, and I will give him Five Pounds of it, or abate it, for he is not bound to pay it till towards Night.

This Case was said to be Adjudged: In Consideration that the Plaintiff had promis'd to the Defendant Ten Pounds a Day, according to the Condition of an Obligation, the Defendant promis'd to deliver the Obligation; that this was a good Consideration. *Hutton's Reports*, 111.

If I lose my Goods and another findeth them, and I promise if he will deliver them to me, I will pay him Money; this is said not to be good. *Hutton's Reports*, 101.

If I be Bail for another's Debt in the *King's-Bench*, and the Creditor recovers his Debt there of me, as he may, and then he doth, in Consideration of this, promise to me the principal
Obligation,

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Obligation, and a Letter of Attorney to sue it against the Principal Debtor; this is no good Consideration, and therefore not a binding Promise, for he hath done nothing to merit it, but what he was bound by Law to do. *Crook 1. last Publish'd, 538.*

If the Obligor pay the Money to the Obligee after the Day, and thereupon the Obligee promises to deliver the Bond and doth not, no Action will lie for this, nor hath the Obligee any Remedy for it but in Equity.

If *A.* owes *B.* a Hundred Pounds, and *C.* being a Cloth-worker to *A.* hath Cloths of his in his House, and they Three agree that *B.* shall have these Clothes for his Money, and *C.* doth promise to deliver them; this is a good Consideration to bind *C.* to deliver them, for by this he is discharged against *A.* *Adjudged, Trin. 2 Jac. B. R. Warder and Chapman.*

If I demand Ten Pounds of another, and he promises me, that if I can prove it a true Debt he will pay me; if I do prove it, as I may in the same Suit for the Debt, this will be a good Consideration. *Adjudged, Mich. 18 Jac. Stat. & Mary, Cook 11. 59. 10 Ed. 4. 11.*

If a Scrivener promises me, that in Consideration I will let him have the putting out of my Money, that he will take good security for it; this is a good Consideration and *Assumpsit. Mich. 7 Jac. B. R. Kellingworth's Case.*

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If I deliver one Ten Pounds to re-deliver it me again, and he doth not so; it seems I may not have this Action for my Relief, but I may have an Action of Account. And yet if there be in the Case a Promise to deliver it, there perhaps I may have Relief by this Action. *Hill. 37 Eliz. Co. B. Howdel's Case.* And yet if I deliver over one Ten Pounds to deliver over to J. S. and he promises to pay it to J. S. J. S. cannot have an Action for this. *Crook 1. last Publish'd, 380.*

If one, in Consideration of Land sold by me to him, promises me Twenty Pounds for it at a Day certain; or if I sell my Land to another for Twenty Pounds, to be paid to me at a Day certain; in these Cases I may have an Action for the Money, albeit the Land be not assured, for he may compel me in *Chancery* to make the Assurance of the Land. *3 H. 7. 14. 2 H. 7. 12.*

If I have recover'd Five Pounds of another by Judgment, and in Consideration of Four Pounds paid by him to me, promise him to acknowledge Satisfaction of that Judgment before such a Day; this is a good Consideration and Promise to ground an Action upon. *Crook 1 Part, last Publish'd, 429.*

If one that is illegally arrested, shall promise in Consideration of his Discharge thereof to pay so much; it seems this Promise will not bind, for the Consideration is not valuable. *Crook 1. last Publish'd, 913.*

If

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If I have a Recognizance chargeable upon Land; and the Tertenant, in Consideration that I will assign the Statute to him by way of Discharge, promises Money to me; this is a good Consideration. But if it were to assign it to a Stranger, it were not good, for that were Maintenance. *Adjudged. Pasche, 18 Eliz. B. R. Barrow and Green.*

If one be indebted to me, and for Payment thereof delivers me Goods, and after another Man desires me to deliver him the Goods and he will pay me the Debt; this is good. *Brownl. and Gouldsb. 3.*

If one have a Lease for Years, the Reversion whereof is in *J. W.* and the Tenant (being in talk of Sale of it) in Consideration that I will procure a Licence from *J. W.* to him, he doth assume to pay me as much as I shall disburse and deserve therefore: This is a good Consideration and Promise, albeit he might have sold it without the Licence of *J. W.* *Hutton's Reports, 39.*

If I promise, that whereas I am obliged to *A.* if you will procure *B.* (who is a Stranger) to make a Release thereof to me, I will pay you Forty Pounds; in this Case, albeit it be done at my Instance, no Action lieth. *Hutton's Reports, 39.*

If I be bound in an Obligation to pay another Fifty Pounds on a Day to come; and afterwards, after the same is due, in Consideration that I at his Request will pay unto one
Playford

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Playford to his Use, Fifty Pounds upon the Tenth Day of *December* following, in Satisfaction of the said Debt, he doth assume and promise to me to deliver up the same Obligation to me when he shall be thereunto requested, to be cancell'd; this is a good Consideration and Promise: But in an Action brought upon it, there must be a special Request averr'd, or it will not lie. *Bulstr.* 3. 298.

If I at another Man's Request deliver him divers Pieces of Cloth, and he assumes to re-deliver them to me on Request; no Action will lie upon this: But if it were Money out of a Bag, it would. *Telverton*, 128.

If one, in Consideration I will make him a Lease of such Land, assumes to pay me Twenty Pounds; this is not a good Consideration, for by this he may make a Lease at Will only. *Crook* 1. last Publish'd, 565.

If one promises to one that is a Physician, so much to heal a poor Man of his Disease, or to a Labourer so much to amend an High-way, he may have this Action for the Nature of the Work: So to do any such-like good Work, and he doth it, he may have this Action for this. And it is said, If a Day be set for the Payment of the Money, that the Party to whom the Promise is made, when the Day comes, may sue for it before the Work is done. *Doct. & Student*, 105. *Plow.* 35. 17 *Ed.* 4. 5. *Hob. Rep.* Pl. 278. But *Quare*, unless there be a Promise
by

Action upon the Case. 191

by the Party to me to do the Work, except the Goodness of the Work supply and make it out a Consideration in Law. *Owen's Rep.* 94.

A. doth promise Ten Pounds to *B.* if he suffers *C.* to enjoy Land; there, altho' *C.* enjoy it not, yet if *A.* agrees, and doth not interrupt *C.* it is said this Action lies. *Pasche, 15 Jac. B. R. Taylor and Wilks. Quare of this.*

A. being a Copyholder, makes *B.* his Executor, and intends to surrender, to the intent that *B.* should satisfy a Debt to *D.* hereupon the Son of *A.* promises, that if he doth not surrender, but suffers the Land to descend, he will satisfy the Debt. *A.* dies, *B.* shall have an Action against the Son, for it is a good Consideration. *Hill. 9 Jac. B. R. Gray and Gray. Survey of the Law, 96.*

If I have a Judgment against a Man for Twenty Pounds, and I promise him, that if he will pay me the Money I will give him Five Pounds; this is a good Consideration to give an Action upon my Promise, for it will be Cost and Trouble to me to get it. *Trin. 38 Eliz. Dixon and Adams.*

So if one have taken away my Goods from me wrongfully, and I promise him Ten Pounds to let me have them again; this is a good Consideration. *Adjudged. Pool and Clipson's Case. Tomp. Car. 1.*

If one saith to me, that if I will depose before the Mayor of *A.* the Truth of what I say and affirm, he will pay me Twenty Pounds; this

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this is good: And if I do voluntarily depose it before the Mayor, I may recover the Money in this Action. *Hill. 38 Eliz. Co. B.*

If one have a Judgment against me for a Hundred Pounds, and he promises me so I will pay him Fifty Pounds, he will acknowledge Satisfaction, or release the Execution of a Hundred Pounds by a Day; this is a good Consideration to give an Action if it be not done. *Adjudged. Cook and Harvey's Case. Adjudged, Mich. 38 Eliz. Co. B. Reynold's and Pinham's Case.*

If A. oweth to B. Twenty Pounds, and C. saith to A. pay him his Twenty Pounds, and I will pay it you again; this is a good Consideration and Promise. *Adjudged, M. 7 Car. B. R.*

If I be bound in a Bond of Twenty Pounds to pay Ten Pounds by a Day, and fail at the Day, and after the Obligee bids me pay Twelve Pounds to J. S. and he will deliver the Bond such a Day; this is good to raise this Action, if it be not deliver'd. *Harvey's Case. 4 Jac.*

If one be bound to pay me Money on Bond by a Day, and I promise him, if he do it, I will give him his Bond to be cancell'd; this is a good Consideration and Promise. *Crook, 1 Part 5.* And if the Promise be to give him Five Pounds, if he will pay it the Morning of the Day; it is a good Consideration. *Crook, 1. 5.*

If one, having made a Lease for Years, assumes that I shall quietly hold it, without the Let of any Person whatsoever, this is a good Promise,

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Promise, and Disturbance with or without a Title, is a Breach of it to give Action. *Dyer*, 328.

If one, in Consideration that I will be bound for his Appearance, being arrested upon a Recognizance, promises me to appear at a Day, and doth not; I may have this Action against him, and it will not excuse him that a *Certiorari* came to remove the Record. for he must appear notwithstanding. *Adjudged. Trin. 9 J. c. B. R. Roll's Case.*

If one promises to me, in Consideration that I have paid to him Forty Pounds for the Debt of *A.* my Son, that he will deliver to me all the Bills and Obligations in which *A.* was bound to him; I may have Action upon this, but therein it seems must lay a Request and Denial to deliver them; and I shall not need to aver in my Count, that there were Bills or Bonds. *Crook 1. last Publish'd, 133.*

If a Promise be laid to pay Money owing for Goods, in Consideration of the Goods deliver'd, this is no good Consideration; otherwise it is, if it be for Goods sold. *Leonard's Rep. Pl. 222.*

If I shall deliver to *J. S.* a Bag sealed with Money, and in Consideration hereof he promises to re-deliver it to me upon Request; this Action will not lie upon this, for *J. S.* can make no Benefit by this, as he may of Money at large deliver'd to him. *Telverton's Rep. 50.*

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If upon Request one becomes Bail for *J. S.* in an Action against him, if afterwards hanging this Action, he promiseth to discharge him of it, this is good to raise the Promise. *Bulstr.* 3. 187.

If one have a Lease for Years of my Land, and being ended, I do in Consideration thereof that the Lessee hath occupied the Land, and paid the Rent, promise to save him harmless against all Persons for the Occupation thereof for the Time past and to come; this is a good Consideration and Promise. *Leonard's Rep. Pl.* 154.

If there be a Talk of Marriage between *Fulwood* and a Widdow of *London*, and in Consideration that I will give my Assent, that the Father of those *Fulwoods* should convey to *Fulwood* all his Lands and Chattels, *Fulwood* promised to pay such a Sum of Money to me as their Father shall assign; it seems it is good, and I am to averr nothing, but the Father did assent and appoint such a Sum of Money to be paid. *Fulwood's Case. Brownl. P.* 32.

If one, in Consideration that I will give my Consent that my Father shall make an Assurance to him of his Land, promises to give me Ten Pounds; this is good: And in this Case, it seems, if I give my Assent, altho' no Assurance be made, yet I may recover the Ten Pounds, and especially where by the Agreement I promise to give my Consent; but if I had given my Consent, I could have had nothing.

Fuller's

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Fuller's Case. Godb. Reports, 28, 29 Eliz. Ca. B. Pl. 106.

A. doth promise to B. to discharge him and save him harmless from all Bonds in which he shall be bound for the Son of A. at the Request of the Son; B. sued, and shew'd, That he, as Fidei Jussor, was bound for the Son, &c. in this Case it was held a good Consideration, but that he ought to have shew'd precisely the Request of the Son, and that to say as Fidei Jussor is not sufficient. Pasche, 9 Jac. B. R. Samerston's Case.

If A. be indebted to me a Hundred Pounds, and B. in Consideration that I will abate Ten Pounds, and forbear the Fourscore and Ten Pounds till Michaelmas next, assumes to pay me the Fourscore and Ten Pounds if he doth not pay me: In this Case, if I shall release or discharge the Ten Pounds, and forbear to sue for the other till Michaelmas, I may have this Action; but if I sue for the Fourscore and Ten Pounds before, otherwise. Cook 1. last Publish'd, 477.

If I, in Consideration that a Lessee for Years of Land shall at my Request surrender all his Interest to me, and will be contented that I shall have it to use at my Will, assumes to pay him Threescore and Ten Pounds when I shall be thereunto requir'd; this is good and Actionable when a good Surrender is made, and an actual Request perform'd, and not before. Crok 1 Part, last Publish'd, 487, 488.

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If one, in Consideration that I will relinquish such a Suit, promises to discharge me of all the Suits of *J. S.* and I do relinquish; yet this is no good Consideration, for I may relinquish it to Day, and begin it to Morrow again. *Crook 1. last Publish'd, 561.*

If I arrest *B.* for a Debt due to me, and *C.* assumes to me, that if I will not prosecute this Suit, that he at such a Day after will pay me the Debt; this is good. *Judged: Affirmed in Error. Crook 2. 397.*

If one owes me Money upon an Obligation, and I being in talk to sue him, he in Consideration that I will defer the Payment of the Money, and not sue him upon that Obligation, doth promise to pay me; this was adjudged a good Consideration, and the deferring the Suit in such a Case, shall be intended for all the Life-time of the Obligee, and that if he sue, the other may have an Action of the Case against him for it: But if the Consideration were to forbear *Paululum Temporis*, this were not good. *Noy's Rep. 83.*

Forbearance.

Forbearance.

IF the Father of an Infant Debtor, or himself when he is of the Age of Twenty One, promises to pay the Money if the Creditors will not sue him; this is no good Consideration. *Rolls Abr. 1 P. 18. V. 1. 2.*

It is a good Consideration, if one forbears who has a lawful Power to sue upon a Promise to pay the Debt. *Ib. 1 P. 20. V. 11. 12.*

If the Consideration be to forbear *per Paulum Tempus*, or *pro aliquo Tempore*, upon a Promise to pay; it is not good, tho' he forbear a great while, because he had Power to sue him presently. *Ib. 1 P. 23. V. 25. 26.*

It is a good Consideration to forbear for a reasonable Time, if he avers a certain Time afterwards. *Ib. 1 P. 26. V. 44.*

It is a good Consideration for the Plaintiff to forbear the Defendant, who is arrested, a little Time, if he lets him go at large for one Hour. *Ib. 1 P. 27. V. 47.*

Forbear him, without more saying, is intended perpetually, and the Consideration is good, with an Averment that he hath forborn, and doth still forbear. *Ib. 1 P. 27. V. 45.*

The Words of the Consideration being, To stay for his Money until, &c. or to forbear the Debt, (*i. e.*) all the World, and any Stranger

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that may be sued, *scil.* the Executors or Ordinary (and not the Defendant); the Consideration is good upon the Promise of the Wife of the Testator to pay the Debt, whether she has Goods of the Testator or not, for it is a Prejudice to the Plaintiff, and a Benefit to the Stranger. *Ib.* 1 P. 22. V. 23.

The Promise of the Executor in Consideration of Forbearance, &c. doth only extend to pay the Debt with which he is chargeable as Executor; for to forbear the Debt where there was none, or with which he is not chargeable, as if there had been a Debt, and the Executor had nothing in his Hands at the Time of the Promise, is not any Benefit to the Defendant, or Damage to the Plaintiff, and so no good Consideration; and such Matter may be given in Evidence, when he is charged upon his *Assumpsit* generally as a Stranger, as he may be, for the Promise is made in his own Right; and tho' he doth not give such Matters in Evidence, yet the Money which he payeth in Satisfaction of the Debt of the Testator, shall be allow'd to him as parcel of his Account as Executor. *Coke's Reports*, 9. *Banes's Case*.

It is not a good Consideration to forbear to sue B. as Administratrix to her Husband, upon her Promise to pay, without saying that she was Administratrix. *Ib.* 1 P. 25. V. 34. *In Arrest of Judgment*.

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It is not a good Consideration to forbear to sue the Heir of the Obligor, who hath not Assets, upon his Promise to pay the Money. *Ib.*
1 P. 28. V. 57.

If the Consideration be to forbear to sue me as Executor, if the Plaintiff declares upon it, he ought to averr that the Defendant is Executor, for the Word [*as*] qualifies the *Assumpsit*. *Syderfin*, 1. 242. *Quick* against *Copleston*.

It is a good Consideration, if the Attorney of the Plaintiff promises the Defendant to forbear to sue Execution against him, if any Thing be promised for it. For tho' it was objected, that the Consideration arises *ex Turpe*, being contrary to the Trust and Oath of an Attorney to forbear when he was imploy'd to sue Execution; yet it shall be intended, that the Attorney had Authority from his Client to forbear, or to use some other Means as to him should seem requisite for the obtaining of the Debt. *Syderfin*, 294. *Russel* against *Haddock*.

Mittere Prosequi signifies to forbear, as well as *Omittere*. *Syderfin*, 1. 446. *Buckley* against *Turner*.

It is a good Consideration to forbear till he should send to *L.* which is to be understood a convenient Time till he could send to *L.* *Syderfin*, 1. 45. *Trukett* against *Maul*.

Tho' it be not a good Consideration to forbear for such a Time to sue a Stranger, upon his Promise to pay the Debt; yet it is a good

Consideration to forbear to sue for such a Time a Man that is only liable in Equity, as the Principal Obligor and his Executors are to the other Obligor who is the Security. *Syderfin*, 1. 89. *Scot* against *Stevens*.

If I sue another, and we are at Issue, and he in Consideration that I will stay from further prosecuting the Suit, promises to pay all my Charges and Expences therein, and I do forbear; this Action will lie, for the Consideration is good, albeit I say not how long he should stay his Suit. *Crook*, 1. last Publish'd, 688, 689.

The Master orders his Bailiff to pay, &c. out of his Rents due at *Michaelmas* next; the Bailiff promises his Master's Creditor, that if he will give him Time, he will pay it a Month afterwards: Tho' it does not appear that the Bailiff has receiv'd any of the Rent due at *Michaelmas*, it shall be intended that he has, and so the *Assumpsit* good. *Levinz*, 2 Part 20. *Davison* against *Hestop*. *Ventris*, 1 Part 152. *Davison* against *Hoslip*.

If I be in Debt to *J. S.* and I deliver Goods to *A. B.* to pay *J. S.* and *J. S.* doth require the Debt of *A. B.* who doth desire him to forbear him Three Weeks and he will pay him; this is a good Consideration and *Assumpsit* to give Action. *Williams's Case*, M. 7 Jac. B. R. But in this Case he shall recover Damages only for Forbearance; for the Debt is still recoverable of me as it was before. *Mich. 4 Jac. Lee's Case*.

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Case. *B. R.* So if *A.* owes to me Ten Bushels of Corn, and delivers them to *B.* to deliver to me, and *B.* prays me to forbear till *Michaelmas* and he will pay me the Corn, or the Worth of it; this is a good Consideration and *Assumpsit*. *Mich. 18 Jac. B. R. Jackson's Case.*

If an Executor or Administrator of one that did owe me Money, in Consideration thereof, and that he hath Assets in his Hands, assumes to pay me such a Day; this is a good Consideration to make the Promise actionable, especially if I grant any Forbearance in it. But if in the Case there be no Debt originally due, or the Party hath not Assets to pay it, some say no Action will lie upon the Promise. *Coo. 9. 93. 94.* But Justice *Huttons* at *Sarum's* Assizes, *21 Jac.* held, That the Action will lie, tho' there be no Assets in his Hands that makes the *Assumpsit*, especially where he saith he hath Assets, albeit he hath no Assets.

And so it was held in *Barne's Case.* *Pasche, 9 Jac. B. R. per Curiam.*

If an Executor owes me Five Pounds for the Testator, and he buys of me Six Barrels of Beer, and in Consideration hereof promises to pay me for both; this is a good Consideration for both, to charge him *de Bonis Propriis.* *Trin. 37 Eliz. Cook and Wheeler's Case.* But in these Cases, the Plaintiff is (it seems) to shew in the Count the Cause of the first Debt what it was: But others hold the contrary. *Crook, 2 Part 206, 207. Crook 1. 3. 21.* The Executor, in
Conside-

Consideration that the Plaintiff would forbear his Debt till Probate of the Will, promis'd Payment; this was held good. So if he acknowledge the Debt due from the Testator, and pray Forbearance till such a Time, and promiseth then to pay it, and the Plaintiff do forbear; this was held Actionable whether he had Assets or not, and that in this Case the Plaintiff need not to averr he hath Assets.

Bulstr. 2 Part 278. *Crook* 2. 47. *Crook* 1. 82.

The same Law for forbearing a Suit for a Legacy. *Levinz*, 2 Part 3. *Davis* against *Rayner*. *Ventris*, 1 Part 120. *Davis* against *Wright*.

A being bound for the Testator and forc'd to pay his Debts, the Executor, in Consideration of Forbearance to sue him, promis'd to pay him; tho' it does not appear that the Testator had promis'd or was oblig'd to save him harmless, yet in Equity he should do it, and a Suit in Equity is a Suit. *Levinz*, 1 Part 71. *Scot* against *Steuenson*.

In Consideration that the Plaintiff would forbear him, *scil.* the Heir, he promises to pay; not good, because it does not appear that the Ancestor oblig'd himself and his Heirs, and the Consideration is not to forbear generally, but to forbear him who does not appear chargeable. *Levinz*, 1 Part 165. *Hunt* against *Smain*. *Ventris*, 1 Part 159. *Barber* against *Fox*.

Assumpsit against an Executor; That whereas J. S. had a Judgment against the Testator, and had made a Letter of Attorney to the Plaintiff
to

to recover and receive it to his own Use: The Defendant in Consideration that the Plaintiff would forbear Execution thereupon, promis'd to pay him. The Consideration is good, for it shall not be intended that the Plaintiff in the Judgment would sue Execution, but it shall be intended that it was assign'd to the Plaintiff here in Satisfaction of a Debt. *Levinz, 1 Part 188. Ruffel against Haddock.*

To forbear to sue one *ut Administrator*, [ut] is Affirmative, and not Similitudinary; as a Descent to one as Son and Heir, is Affirmative that he is Heir, a good Consideration. *Levinz, 1 Part 222. Downs against Beck.*

A. indebted to B. A. writes a Note to M. to pay it to B. the Plaintiff, who in Consideration of forbearing him a Fortnight promises to pay it, no Consideration. Levinz, 1 Part 248. Clipsam against Morris. Ventris, 1 Part 9. *Clipsam against Morris.* For there was no Trouble or Prejudice to the Plaintiff, nor Benefit to the Defendant, for the Plaintiff might sue his Debtor in the mean time; neither is it alledged, that the Defendant was indebted to *A.* But if it had been in Consideration that the Plaintiff would accept of the Defendant for his Debtor, that might have been good; for that is an implied Discharge of the other, whom if he had sued, the Defendant might have had an Action.

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J. S. was indebted to the Plaintiff for Forty Pounds, and the Defendant was indebted in the like Sum to J. S. and J. S. did appoint him to receive this 40 l. from the Defendant in Satisfaction for the Debt due to him from J. S. which he signifying to the Defendant; he in *Consideratione Præmissorum*, and that the Plaintiff would forbear him a Quarter of a Year, promis'd that he would then pay him. It was mov'd in Arrest of Judgment, That here was no sufficient Consideration, for it doth not appear that the Defendant was Party to this Agreement, whereby he should become chargeable by the Plaintiff, and then the Forbearance is not material, and in the mean Time he is suable by J. S. his Creditor; *Sed non allocator*: For upon the whole Matter here it appears, That the Defendant agreed to this transferring of the Debt of J. S. to the Plaintiff, and it was agreed that he should be discharged against J. S. But in *Clipsam's Case Prox' ante*, it did not appear that the Defendant was at all indebted to him that sent the Note. *Ventris, 1 Part 153. Oble against Dittlesfield.*

If one promises me in Consideration I will forbear the Debt he or another oweth me, a little while, or in Consideration that I will a little stay my Suit I have against him, he will pay me; this is not good. *Crook, 1. last Publish'd, 19.*

If an Administrator desires to be forborn such a Time, and he will pay the Debt; this

is a good *Assumpsit*, and the Plaintiff shall not need to set forth that he hath Assets, for that shall be intended. But it may be given in Evidence, and if the Defendant hath fully Administred, and hath nothing left, he may shew it, and then he will not be chargeable. *Cook* 9. 90, 92, 93, 94.

If one declares, That the Intestate was indebted to him a Hundred Pounds, and the Administrator in Consideration thereof, and that the Plaintiff would forbear him for a reasonable Time, promis'd to pay it, and it was adjudged for the Plaintiff; and that Forbearance for a reasonable Time is a good Consideration, because the Court may judge of it: But that Forbearance *Paululum Temporis* is not good. *Trin.* 14 *Eliz.* B. R. *Linghil and Broughton. Survey of the Law*, 90, 91. And altho' the Creditor doth forbear half a Year after, this will not make the *Assumpsit* good. *Crook* 1. *last Publish'd*, 19.

If the Count be thus: That where *A.* was indebted to him Thirty Two Pounds, for which he sued *A.* and that it was agreed between him and *A.* to stay the Suit, and if he paid it not before *Michaelmas*, he should give Security. That in this Case he need not shew how the Debt grew due, for the Forbearance, and not the Debt, is the Cause of Action. But otherwise it is where the Testator is in Debt, and the Executor promiseth; for there the Debt is the Cause of Action. 2. That he need not shew he did surcease his Suit, because
cause

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cause the Agreement is Reciprocal. But if the *Assumpsit* be this; That *A.* in Consideration that the Plaintiff shall surcease his Suit, promiseth to pay the Debt, there he must shew that he did surcease. *Pasche, 14 Jac. B. R. Fuller's Case. Survey of the Law, 91.*

If one promises to me after his Dog has killed my Sheep, That if I will forbear to sue him, he will recompence me the First of May; this is a good Consideration, and liable to Action upon the Promise. *Crook 1. 81.*

If an Infant takes up Wares of me, and promises to pay me such a Day, but dieth before the Day, and the Executor desires Time to forbear my Suit till such a Day, intending to sue, and he will pay me, or give me Security for my Money; this is not a good Contract to ground an Action upon. But if an Infant at his full Age promises to pay a Debt due in his Non-Age; this is recoverable of him, or of his Executor if he die. *Crook 1. 127, last Publish'd.*

If one be in Debt to me a Hundred Pounds, and for the Satisfaction of it delivered me divers Goods *in Specie* to the Value of the Debt; and after I call upon him for my Money, and to sell the Goods to do it, and he in Consideration I will forbear for a certain Time, assumes to pay me such a Day; this is a good Consideration. *Adjudged. Telverton, 164.*

If *A.* be indebted to *B.* Twenty Pounds, and *C.* is indebted to *A.* Thirty Pounds, and *A.* in Satisfaction of the Debt he oweth to *B.* assigneth

signeth the Debt of Thirty Pounds which C. oweth to him, and makes him a Letter of Attorney to sue in his Name, and A. and B. do acquaint C. with this Agreement, and C. promileth to B. in Consideration that he will forbear till such a Day, that he will pay him the Money; this is not good: As where Executors that have not Assets, promises to pay a Debt of the Testator. And, as where I deliver Goods to my Servant to deliver over to J. S. and J. S. promises my Servant, that in Consideration he will deliver them to him, he will give him so much Money; this is no Consideration, except they be deliver'd accordingly; for these are only Authorities countermandable at all Times. *Winche's Reports*, 8. *Cook* 9. *Banes's Case*.

If the Plaintiff say, I will forbear to sue, so you will promise to pay me, and upon this he doth promise to pay; in this Case he must forbear it for ever. But if the Defendant only speaks the Words thus, If you will forbear to sue, I will promise to pay you; and the Plaintiff agrees and forbears a certain Time, he may sue afterwards. *Owen's Rep.* 110.

A. was bound to B. in Twenty Pounds, and afterwards A. promised to B. that in Consideration the said A. should not be damnified by reason of the said Bond, to give the said B. Ten Pounds, and upon that Promise B. brought an Action of the Case, and shewed that the Defendant was not damnified by reason of the said

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said Bond; and it was adjudged, that the Action was not maintainable, because he did not shew that he had Released, or otherwise discharged the Defendant of the Bond. *Leonard's Rep. Pl. 159.*

If one owes Money to me, and he promises, that in Consideration that I will agree to give further Day for the Money he owes me for Six Months, that he will secure it to me; this is no good Consideration, for I may agree to give Day, and sue him after. *M. 7 Jac. B. R.*

If the Son of *A. B.* be indebted to me on a Bond of Eighteen Pounds to be paid at a Day, which is not paid, and the Son moves his Father to pay it; the Father, in Consideration that I will give him a longer Day, doth promise to pay it, and I did give him a longer Day; this was adjudged in the *King's Bench* a good Consideration: But the Judgment was reversed in the *Exchequer-Chamber*, because it was not good. *Crook 1. last Publish'd, 283.*

If one promises to me, that in Consideration that I will forbear him a Debt he doth owe me, for a little Time, (or for a short Time, or for a convenient Time) that he will pay it; these Considerations, and so the Promises grounded upon them, are void for Incertainty. *Crook 1. last Publish'd, 759.* So where the Agreement is *aliquo Tempore*, for some Time. *Bulstr. 1 Part 92. 14 H. 8. 18, 19, 20.* Yet see the Case in *Crook 1. 175. 316.*

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If one owes me Two Hundred Pounds for a Legacy given to my Wife, and if I will forbear it, he doth promise me to pay me according to the Rate of Ten Pounds by the Hundred. This Promise seems to be somewhat incertain, and that it is not good. *Crook 2. 603.*

Vide Statute 29 Car 2. against Frauds and Perjuries; That no Action shall be brought to charge an Executor or Administrator upon any special Promise to answer one of his own Estate, or upon any Promise to answer for the Debt, Default, or Miscarriage of any other Person, &c. unless the Agreement, or some *Memorandum* or Note thereof, were by the Person, or some other impower'd by him, put into Writing, sign'd, &c. *Print in Statute.*

Performance of a Promise.

If *A.* promises to give to *B.* as much as to any of his Blood, tho' *A.* makes *B.* his Executor. *Syderfin 25. Shipston and Booler.*

Pleadings in Assumpsit.

If the Consideration be, that the Plaintiff will pay so much Money, he ought not only to shew a Tender, but also a Refusal, for the Refusal is the Thing issuable, being the Payment in Law, and not the Tender; yet after Verdict it is good. *Syderfin 1. 13. Ball and Peake.*

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A Pro

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A Promise to a Woman to marry her; if the Woman doth not say, that she offered her self to be married, it is good enough after Verdict: Cited in the Case of *Ball and Peake*. *Syderfin* 1. 13.

Judgment was stay'd, for that the Consideration of Forbearance was till he and they should send to *L.* and the Declaration is, That he hath forborn till they, &c. without saying, till [he and they]. *Syderfin* 1. 45. *Trickett* against *Maudlee*.

The *Assumpsit* was to warrant all that *J. S.* owes for Goods deliver'd to him, the Breach may be assigned as well for Non-Payment, as for not Warranting. *Syderfin* 1. 178. *Baxter* against *Jackson*, upon a Writ of Error.

A general *Indebitatus Assumpsit* is not good, as for Ten Pounds in Consideration of a like Sum before the Time due, and unpaid, without saying how it was due; for it may be due by Specialty, and then no Action upon the Case lies. *Syderfin* 1. 182. *Cooke* against *Samburne*.

A general *Indebitatus Assumpsit* for Tythes (in the Declaration *pro Decimis*, without saying *Deliberat.* or *Vend.* which was held good, for *pro* implies a Sale) does not lie without shewing a special Contract; but after Verdict it shall be intended, that there was a special Contract, because the Jury have found it. *Syderfin* 1. 223. *Wright* against *Berle*.

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It was collaterally agreed, in the Case of *Caine* against *Gunston*, *Syderfin* 1. 225. That where the Agreement is laid to pay 2*l.* for every Tun of Iron that shall be deliver'd, &c. and the Declaration is, That he hath deliver'd, &c. one Tun and a half, &c. the Declaration is not good, because it doth not pursue the Agreement, and a Verdict for the Plaintiff don't aid it.

An *Assumpsit*, that if the Plaintiff will put abroad her Daughter to be instructed in *Opus Acutum*, the Defendant will pay for her Board for One Year; and the Plaintiff declares, That she hath put her abroad for Three Quarters of a Year, and that her Board for that Time comes to so much, &c. and good; because if there be any Variance concerning the Agreement, it is for the Advantage of the Defendant, *scil.* to pay less than he ought; for the Effect is, That he will pay for her Board not exceeding One Year, and if she was there but one Month, and then the Daughter had died or run away, the Defendant shall be charged for it upon this *Assumpsit*. *Syderfin* 1. 225. *Caine* against *Gunston*.

Tho' the Declaration be, That the Plaintiff promis'd to pay the Plaintiff; it shall be amended after Verdict, in as much as he hath well declar'd, that the Defendant was indebted to him. *Syderfin* 1. 306. *Bedford* against *Uffington*.

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Declaration in Case, (but not in Debt) that one was indebted and found in Arrear so much, which he hath not paid, is not good without an *Assumpsit solvere*. *Sydersin 1. Bedford against Uffington, by Twisden and Wyndham.*

An *Assumpsit* to give so much a Day for Horse-hire, and to return the Horses by such a Day, or to pay Ten Pounds for every Horse; and the Breach was alledged, that he kept One so many Days more, and the other was not return'd at all, and not good, because the Breach differs from the *Assumpsit*. *Sydersin 1. 440. Wright against Johnson, upon a Writ of Error.*

The Consideration being a general Promise, *scil.* to seal and deliver a general Acquittance to the Use of *A.* if he alledges that he delivered, &c. to *B.* to the Use of *A.* this is good after Verdict, tho' *B.* be a Stranger upon *Non Assumpsit*, wherein he denied the Promise, but not the Performance of the Consideration. Here the Consideration being Executory, *scil.* to deliver, &c. he ought to shew the Acquittance, whereby it may appear to the Court to be a sufficient Acquittance, yet good after Verdict. *Crook 3. 19. Farrer against English.*

For as much as divers Matters and Things may be included and comprised in the Account, which is reduced to a Sum certain, the Plaintiff, in the Declaration upon *Assumpsit*, need not shew the Particulars for which they accounted. *Crook 3. 116. Homes against Savill.*

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If the Consideration be executed, the Plaintiff need not shew when nor where, because it is but an Inducement to the Action. *Riggs and Bullingham*, cited in *Crook* 3. 409..

In Consideration that he hath mended his Boats, *scil.* upon his Request the Defendant promis'd to pay as much as he deserv'd; the Declaration is good, without shewing what Boats, for the Defendant who requested knew what Boats he desir'd to be repair'd. *Crook* 3. 573. *Cauvey* against *Aldwyn*.

The Plaintiff shews, That the Defendant was Rector by the Plaintiff's Procurement, upon the Defendant's promise to pay *proinde*; which cannot be, for he never was Rector, but a Person utterly disabled to be a Parson by this Simoniackal Contract. *Crook* 3. 361. *Mackaller* against *Todderick*.

Assumpsit, in Consideration of marrying his Daughter *S.* to give him in Marriage with her as much as he gave in Marriage with any other of his Daughters; the Plaintiff alleges *in Facto*, that the Defendant gave in Marriage to one *E.* with his Daughter *A.* 100 *l.* and also a Bond of 80 *l.* to pay to the said *E.* 40 *l.* more at Three Months, and after the Father's Decease, if the said *A.* or any Issue of her Body were then alive, in Action by the Husband of *S.* against the Executor of the Father, for not giving to him 100 *l.* and also the like Bond as he gave to *E.* If the *Assumpsit* extends to the Bond, he ought to averr, that *S.* or some of

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her Issue was alive, and not that *A.* and the Issue of her Body is alive, for that is not material, and Damages being intirely given, Judgment ought to be for the Defendant. *Crook 3. 186. Cale against the Executors of Thorn.*

Assumpsit to pay Money upon Request; the general Allegation *Sapius Requisite*, is a sufficient Allegation, and the bringing of the Action is a sufficient Request for Money. *Crook 3. 385. Vivian against Shepping.*

Where *Non Assumpsit* is pleaded to a Consideration executed, the Plaintiff needs only to prove the Promise; for where the Consideration is Executory, the Defendant may take Issue, as well for not performing the Consideration Executory, as upon the Promise. *Brownl. and Goldsb. 8.* And where a Man assumes to pay Money, or do any Thing upon Condition, the Defendant may take Issue upon the Condition, and needs not plead *Non Assumpsit*, but if he pleads *Non Assumpsit*, then he cancellerth the Performance of the Condition. *Brownl. and Goldsb. 10, 11.*

If one assumes and declares, that he should enjoy such Lands according to his Lease, without Let or Incumbrance of any Person, and shews, That it was extended for Debt due to the King by Process out of the *Exchequer*, and so incumber'd, &c. This is not well assign'd, but he must shew for whose Debt, where, and by whom it was due, and so that it was a lawful Incumbrance. *Crook 2. 425.*

If one count for Non-Payment of Money at the Plaintiff's next coming into *Somerset*, and that such a Day he came there, and that the Defendant, tho' often requested, hath not paid, &c. This it seems is good, without shewing that he gave Notice when he came into the County. *Brownl. and Goldsb. 10, 11.*

Assumpsit upon three several Promises, the Declaration is bad in the Third Promise, being for Money receiv'd after the Day of the Promise, and the Damages being intire, Judgment was stay'd for the Whole. *Levinz, 3 Part 335. Noble against Holhead.*

Assumpsit upon a mutual Promise, it sufficeth to align the Breach generally, that the Defendant hath not perform'd his Part without any particular Breach. *Levinz, 3 Part 319. Keech against Knight.*

Outlawry pleadable in Bar in *Assumpsit* upon a Bill of Exchange for 20 *l.* as well as in Abatement; for tho' the Recovery is to be of Damages only which are uncertain, yet the Debt is certain and forfeitable by the Outlawry, as a Debt upon a simple Contract. *Levinz, 3 Part 29. Hage against Skinner.*

A Discharge of an *Assumpsit* on Contract ought to be pleaded, and not given in Evidence. *Levinz, 2 Part 81. Abbot against Chapman.*

In Consideration that the Plaintiff would procure himself to be made a Knight at the Request of the Defendant, the Defendant pro-

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mis'd to pay him 2000 *l.* and says, that he did procure himself to be made a Knight, but doth not say at the Request of the Defendant; the Request shall be intended to be made at the Time of the Promise, *scil.* that he did then request him to be made a Knight, and he would give him 2000 *l.* *Levinz, 2 Part 198. Tripps against Rund.*

Non Culpabilis, is a good Plea and Issue in *Assumpsit*, for it is Trespass upon the Case. *Levinz, 1 Part 142. Elrington against Doshant.*

Where there are Two Considerations, and one is good and the other void, the Damages given thereupon shall be intended to be wholly given for the good Consideration, like to that where Words Actionable and not Actionable are spoke at one and the same Time, &c. *Sydesfin 1. 38. Best and Jolly, per Sydesfin.*

A. doth assume to *B.* to deliver to him Twenty Quarters of Corn every Year during their Two Lives, and that *B.* shall pay to *A.* for every Quarter Four Shillings; in this Case *B.* may have this Action for every Failure, and shall recover Damages for this Time only, and not (as it seems) for all the Time forward. *Dyer 113. Crook 4. 93.*

If one for good Cause promises to deliver to me Twenty Quarters of Barley every Year during my Life; if he fails once, I may have this Action, and so upon every Failure. But herein it would be Wisdom in the Plaintiff to declare, and to lay down his Damages for all the

the Time ; for happily he may not have the Advantage of a new Action. *Crook* 505. *Telverton* 66, 67. But in these Things, it seems the Law was otherwise taken heretofore. See *Bendl.* 3, 158. *Crook* 36. 22.

One in Consideration of Five Shillings promis'd to do such an Act ; or if one gives Ten Pounds to pay a Hundred Pounds if she marry again ; the Damages are given according to the Consideration, and if the Jury be excessive, Relief may be had in *Chancery*. *Owen's Reports*, 34.

Assumpsit to purchase Land at the best Price he could, the Breach was assigned that he did not purchase it ; this is good without Averment, that he could purchase it. *Levinz*, 1 Part 3. Day against *Webb*.

Assumpsit to pay *Quantum Meruit* for making a pair of Hangings, and providing *Quatuor Pictas Pellices* (*Anglice*, gilt Skins) he need not say whether the Hangings were Silk or Tapestry, &c. because the Action is only for the Making of them. 2. *Quatuor Pictas Pellices*, is four painted Whores, it should have been *Pelles*, and therefore the Damages being intire, Judgment was arrested. *Levinz*, 1 Part 204. *Gardiner* against *Fulford*.

Assumpsit in Consideration that he would provide Medicines and cure *J. S.* to pay him *quantum Meruit*, and avers that he found Medicines, and also in Consideration that he had provided Medicines, and has cured *J. S.* &c.
It

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It appears upon the whole Matter, that *J. S.* is cured, for it shall be intended after Verdict, that it was the same Person, the same Distemper, and the same Cure. For it is usual in *Assumpsits* to lay the same Cause of Action several Ways, and therefore Judgment for the Plaintiff, tho' it was not averr'd in the first *Assumpsit* that he had cur'd him, and tho' entire Damages were given. *Levinz*, 1 Part 280. *Lee* against *Edwards*. *Ventris*, 1 Part 44. *Lee* against *Edwards*, *Ib.*

After a general Verdict upon Two Promises and entire Damages, Judgment was arrested, because no Custom was laid to warrant the second Promise upon one of the Bills of Exchange, and without Custom an *Assumpsit* upon a Bill of Exchange is not maintainable. *Levinz*, 1 Part 298. *Brown* against *London*.

Indebitatus Assumpsit brought for Money won at a Play call'd *Hazard*; a general Declaration is good, without setting forth mutual Considerations. *Ventris*, 2 Part 175. *Sherborn* against *Colbach*.

A Mistake in the Time relating to a Promise, good after a Verdict. *Ventris*, 1 Part 14. *Norris* against *Cussuil*.

If a Man names himself Executor or Administrator, and it appears the Cause of Action is in his own Right, it shall be well enough, and he calling himself Executor, &c. is but Surplusage. *Ventris*, 1 Part 119. *Hornsey* Administrator of *J. L.* against *Dymocke*.

Tho'

Tho' it was not averr'd, that the Defendant did not pay the Money to the Testator during his Life, it is aided by the Verdict. *Ventris*, 1 Part 119. *Hornsey* Administrator of *J. L.* against *Dymocke*.

Assumpsit to deliver a Gelding in as good Plight as he borrowed him, and averrs, That he did not deliver him at all. A Verdict was had for the Plaintiff, yet Judgment was given against him, because the Breach was not laid as the Promise is. *Ventris*, 1 Part 64. *Wright* against *Johnson*.

Assumpsit, That if he would hasten the Marriage, and should have a Son within Twelve Months then next following, he would give him 100*l*. And sets forth, That he did marry soon after, and had a Son within Twelve Months after the Marriage. Tho' it was mov'd in arrest of Judgment, that the Plaintiff had not set forth that he had a Son within the Time, for then next following shall be referr'd to a Day of the Discourse, and not to the Marriage; yet the Court was of another Opinion, and gave Judgment for the Plaintiff. *Ventris*, 1 Part 262. *Anonymus*.

Accomp

Accompt.

Where and for what Thing it lies against a Receiver.

IT lies for me against *B.* if *A.* delivers Money to *B.* to pay it to me. *Rolls Abr.* 116. *A.* 6.

It lies not against one as Receiver, if he has not receiv'd any Money. *Ib.* 119. *H.* 1.

It lies against *B.* if he acknowledges by Deed that he hath so much in his Hands of the Money of *A.* *Ib.* 116. *A.* 8. 5.

If *C.* be appointed by *A.* to receive Money due to *A.* of *B.* and *C.* receives it for *A.* by *B.*'s Appointment, of one that lends it to *B.* an Action of Account can never lie for *B.* but only for *A.* for it was the Money of *A.* and the Property in him. *Ib.* 119. *H.* 4.

A Man deviseth, that his Executor shall sell his Land, and deviseth certain Legacies out of the Money to be receiv'd; if the Executor sells, the Legacies may have Actions of Accompt, if he will not pay the Legacies. *Ib.* 116. *A.* 11.

If I deliver Money to *B.* to deliver it to *C.* to my Use, if *B.* gives it to *C.* an Action of Accompt lies not against *C.* for he is not privy to the Use, but it lies against *B.* *Ib.* 118. *D.* 6.

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It lies not for B. if one receives Money for the common Profits of him and B. *Ib.* 118.

E. 3.

It lies for the General Receiver, as for a Sheriff against his Deputy. *Ib.* 118. E. 4 5.

Against whom it lies.

No Body is bound to Account unless by Act of Law, as Guardian in Socage, or by his own Act, as a Bailiff or Receiver. *Ib.* 117. D. 1.

Receipt by himself, or other Hands.

If the Defendant receives by the Hands of his Wife, it is by other Hands, but by the Hands of the Wife of the Plaintiff is not by other Hands, but by the Plaintiff himself; but by the Hands of the Testator of the Plaintiff, is by other Hands. *Rolls Abr.* 120. *J.* 1, 2, 3, 4.

A Man may declare of a Receipt by the Hands of the Wife of the Plaintiff, of the Defendant, or of a Stranger, or by the Hands of Two Strangers, but not by the Hands of the Plaintiff, or of the Defendant and a Stranger, for that requires Two Issues. *Ib.* 120. *J.* 101.

It lies where Covenant lies.

If *A.* acknowledgeth by Deed that he hath received 100*l.* of *B.* to be ventur'd to the *West-Indies*, and from thence to *England* again, and covenants to render a due Account thereof upon his Return, an Action of Account lies. *Rolls Abr. 116. A. 15.*

Against an Infant.

It lies not against an Infant, for he is not of Discretion to Account. *Rolls Abr. 117. B. 3.*

Against a Feme-Sole.

It lies against her as Receiver. *Rolls Abr. 117. B. 4.*

It lies against her as Bailiff, for she may well attend the Offices of a Bailiff. *Ib. 117. B. 5.*

It lies not for Default of Privity of the Delivery or Receipt.

It lies for one Jointenant against the other Jointenant, who hath received for the common Profit of both; otherwise if he had receiv'd it to his own Use, for Default of Privity. *Rolls Abr. 117. C. 1, 2.*

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If Two have a Ward in Common, and one of them takes the whole Profit, an Action of Account lies not for the other. *Ib.* 117. C. 3.

If one Executor receives all the Debts of the Testator, because he hath Power to dispose of the whole, and there is not any Privy of Receipt between them, an Action of Account lies not for the other. *Ib.* 117. C. 4.

It lies not against Executors upon a Receipt by the Testator. *Ib.* 117. D. 2.

Note, The Statute of Westminster, 2 cap. 23. *scil.* 13 Ed. 1. hath given the Action of Account to Executors; 25 Ed. 3. cap. 5. to Executors of Executors; and 31 Ed. 3. cap. 11. to Administrators. Coke upon Littleton, 89.

Merchants who have Goods in Common.

It lies not for one of them against the other. *Rolls Abr.* 118. E. 2.

Where a Man shall be charged as Bailiff, and not as Receiver.

If A. delivers Goods to B. to sell, and he sells them accordingly and receives the Money, A. ought to charge B. as Bailiff, and not as Receiver, for B. ought to be allow'd for his Costs... *Rolls Abr.* 118. F. 2, 3. 119. H. 3.

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If a Man lets his Mannor rendering Rent, and afterwards makes a Bailiff of the same Mannor, and he receives the Rent, yet he shall not be charg'd as Bailiff, but as Receiver. *Ib.* 119. *F.* 8. But if a Man prescribes that a Bailiff ought to be found for him, as that there is a Borough within his Mannor in which he hath a Part of the Market, and a Court of Pipowders, &c. and that the Defendant is Bailiff of it, and receives the Profits, &c. which are certain, yet he may be call'd Bailiff, that being the Name which he hath by the Prescription. *Ib.* 118. *F.* 6.

A Man may be charged as Bailiff and Receiver of many Things in one Action. *Ib.* 119. *F.* 10.

A Merchant's Factor ought not to be charged as Receiver, but as Bailiff, being to Merchandize with the Goods, and so to have his Expences, Allowances and Factorage; but if he be charged as Receiver, he may demurr, and if he does not, it is cur'd by Judgment, *quod Computet* by Default; and so likewise if he be charged as Receiver, without saying *per que Mains*. *Lepinz*, 2 Part 126. *Burdet* against *Thrule*.

Pleas

Pleas in Bar of Account.

IT is no good Plea, if the Defendant confesses himself to have been ever accountable by his Plea. *Rolls Abr.* 121. L. 7, 8, 9, 10. As if he pleads an Acquittance from the Plaintiff of the Sum demanded. *Ib.* 123. N. 9. But the Plea is good, that the Plaintiff hath granted by Indenture, that if the Defendant would do such a Thing, the Writ of Account should be held for naught which the Defendant hath done, for thereby the Account is released. *Ib.* 123. N. 7.

It is a good Plea for one to whom Money is deliver'd, to deliver it over, or to do any other Thing with it. That he hath deliver'd it over, or done, &c. for if he has, he is not accountable, for it was not deliver'd to him for to render an Account, and he is not accountable but conditionally, *scil.* If he hath not deliver'd it over, or done, &c. *Ib.* 122. M. 2. 3. 7. But he can never give the Delivery over, or the doing of the other Thing in Evidence, upon *nunquam son Receiver plede*, (i. e.) Never his Receiver pleaded, but ought to plead it specially, in as much as he was once accountable conditionally, *scil.* If, &c. *Ib.* 122. M. 1.

It is no good Plea, that the Plaintiff hath accepted any Thing in Satisfaction of 100 l. and the Profits thereof, for that is only a Payment. *Ib.* 123. N. 10.

A Plea which is only in Discharge of the Account.

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count, is not good in Bar, but is good before Auditors. *Ib.* 123. N. 11. & *usque ad O.* As that the Plaintiff hath given to him the Money; but if that Gift had been by Deed, that had amounted to a Release of the Duty. *Ib.* 124. N. 13.

It is no good Plea, that he receiv'd the Money of J. S. to deliver to the Plaintiff, which he has done, for that is only a Payment. *Ib.* 122. M. 4. 6.

If a Man delivers Money to another to deliver to him again, and afterwards he commands the Person to whom he deliver'd it, to deliver it to a Stranger, which he did accordingly, yet this Matter is no good Plea in Bar, because he was accountable at first. *Ib.* 122. M. 5.

It is a good Plea, that he hath accounted before to the Plaintiff himself, or before Auditors assigned by the Plaintiff. *Ib.* 122. M. 8. 9.

It is a good Plea, that he was under Age at the Time of the Receipt. *Ib.* 122. M. 12.

It is a good Plea, that the Plaintiff hath released to him all Actions, or all the Advantage and Profit that he could have by the Account. *Ib.* 123. N. 1. 2. Or hath accepted of 100 l. Bond, or Statute of the Defendant for the 100 l. received, and the Profit to come from thence, for that destroys the Duty, and so the Sum demanded is as strongly released thereby as by a Release of Actions, otherwise if it had not been also for the Profit to come from thence, tho' another Thing be accepted of for the Profit.

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fit. *Ib.* 123. N. 4. 5. 6. But this is not intended of a Receiver to Merchandize.

If upon *N'nnques son Receiver* pleaded, it be found against the Defendant, he shall not afterwards be received to plead in Discharge before Auditors, that he hath deliver'd over, or done, &c. in as much as this Plea proves him not to be accountable, which is found and adjudged against him. *Ib.* 126. O. 22. But he may shew before Auditors, of what Value the Dollars which he receiv'd were at the Time of the Receipt, and is not bound to render an Account of them according to the Value in the Declaration. *Ib.* 126. O. 23.

It is a good Plea for a Bailiff that the Plaintiff was a Disseisor, and the Disseisee hath re-entered. *Ib.* 122. M. 13. And so it is, That the Plaintiff hath let to him the Thing whereof he is supposed Bailiff for Life, &c. *Ib.* 121. L. 6.

Discharge before Auditors.

If a Bailiff of a Mannor pay without any Warrant the Relief of his Master, to the Lord to whom it is due, he shall be discharged before Auditors, for that is a casual Thing of common Course. *Rolls Abr.* 125. O. 8. 9.

If the Bailiff of my Mannor who receives the Rents, or one to whom Money is delivered to deliver over, keeps the Rent or the Money a long Time, he shall be discharged before Auditors, by a Tender in Court of the principal

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principal Sum; for he is not to account for the Profit coming from thence in the mean Time.

Ib. 125. O. 12, 13, 14.

A Receiver to Merchandize shall be discharged of the Profit by his Oath, that he could not find any Thing to buy, out of which, as he believes, he could make any Gain.

Ib. 125. O. 17. He is not bound to buy to lose,

for he himself shall bear the Loss, and not the Plaintiff.

Ib. 124. O. 4. And the Plaintiff shall

not be received to averr against such an Oath.

Ib. 124. O. 6.

A Receiver to Merchandize shall be charg'd,

if he could have got more in such or such a

Thing. *Ib.* 126. O. 20.

So my Bailiff shall be charg'd, if he sells a

Quarter of Corn for 40 d. where he could have

fold it for half a Mark. *Ib.* 126. O. 21.

Death or Outlawry of one Defendant.

If Two in a Writ of Account are adjudged

to Account, and one of them dies or is out-

law'd, the other that appears shall account a-

lone, and if he be charg'd by the Account, he

that is outlaw'd shall be charg'd also; and if

he be discharg'd by the Account, he that is

outlaw'd shall be discharg'd also when he sues

out a *Scire Facias* upon a Charter of Pardon,

for they are adjudged to account jointly. *Ib.*

127. Q. 10.

F I N I S

